

5-29-2012

American Bank v. Wadsworth Golf Construction Co Clerk's Record v. 16 Dckt. 39415

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SUPREME COURT
OF THE
STATE OF IDAHO

AMERICAN BANK,

Plaintiffs-Cross Defendant-Appellant,

v.

WADSWORTH GOLF CONSTRUCTION COMPANY OF,
THE SOUTHWEST, etal.,

Defendant-Cross Defendant-Respondent-
Cross-Appellant,

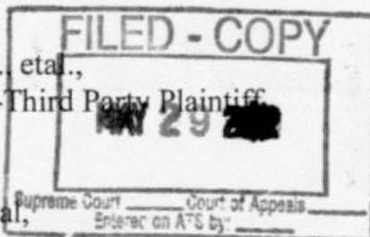
and

TAYLOR ENGINEERING, INC., etal.,

Defendant-Third Party Plaintiff

and

BRN DEVELOPMENT, INC., etal,



Defendants-Cross-Defendants,

*Appealed from the District Court of the First Judicial District of
the State of Idaho, in and for the County of Kootenai.*

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2011 AUG 19 PM 4:37

CLERK DISTRICT COURT

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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho

Case No. CV 09-2619

**PLAINTIFF AMERICAN BANK'S MOTION
FOR PARTIAL SUMMARY JUDGMENT RE
COUNT 5 OF ACI'S FIRST AMENDED
CROSS CLAIM**

PLAINTIFF AMERICAN BANK'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

ORIGINAL 164

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1 limited liability company, THORCO, INC., an
2 Idaho corporation, CONSOLIDATED SUPPLY
3 COMPANY, an Oregon corporation,
4 INTERSTATE CONCRETE & ASPHALT
5 COMPANY, an Idaho corporation, CONCRETE
6 FINISHING, INC., an Arizona corporation, THE
7 TURF CORPORATION, an Idaho corporation,
8 WADSWORTH GOLF CONSTRUCTION
9 COMPANY OF THE SOUTHWEST, a Delaware
10 corporation, POLIN & YOUNG
11 CONSTRUCTION, INC., an Idaho corporation,
12 TAYLOR ENGINEERING, INC., a Washington
13 corporation, PRECISION IRRIGATION, INC.,
14 an Arizona corporation and SPOKANE
15 WILBERT VAULT CO., a Washington
16 corporation, d/b/a WILBERT PRECAST,
17 Defendants.

18 And

19 TAYLOR ENGINEERING, INC., a Washington
20 corporation,
21 Third-Party Plaintiff,

22 v.

23 ACI NORTHWEST, INC., an Idaho corporation;
24 STRATA, INC., an Idaho corporation; and
25 SUNDANCE INVESTMENTS, LLP, a limited
26 liability partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,
Cross-Claimant,

v.

AMERICAN BANK, a Montana banking

PLAINTIFF AMERICAN BANK'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 2

1 corporation, BRN DEVELOPMENT, INC., an
2 Idaho corporation, BRN INVESTMENTS, LLC,
3 an Idaho limited liability company, LAKE VIEW
4 AG, a Liechtenstein company, BRN-LAKE
5 VIEW JOINT VENTURE, an Idaho general
6 partnership, ROBERT LEVIN, Trustee for the
7 ROLAND M. CASATI FAMILY TRUST, dated
8 June 5, 2008, E. RYKER YOUNG, Trustee for
9 the E. RYKER YOUNG REVOCABLE TRUST,
10 MARSHALL CHESROWN a single man,
11 THORCO, INC., an Idaho corporation,
12 CONSOLIDATED SUPPLY COMPANY, an
13 Oregon corporation, THE TURF
14 CORPORATION, an Idaho corporation,
15 WADSWORTH GOLF CONSTRUCTION
16 COMPANY OF THE SOUTHWEST, a Delaware
17 corporation, POLIN & YOUNG
18 CONSTRUCTION, INC., an Idaho corporation,
19 TAYLOR ENGINEERING, INC., a Washington
20 corporation and PRECISION IRRIGATION,
21 INC., an Arizona corporation,

22 Cross Claim Defendants.

23 Plaintiff, American Bank, requests that the Court enter an Order for Partial Summary Judgment
24 Re: Count 5 of ACI's First Amended Cross Claim in accordance to Rule 56 of the Idaho Rules of Civil
25 Procedures and the pleadings and records filed herein.

26 DATED this 19 day of August, 2011.

27 
28 ELIZABETH A. TELLESSEN, ISB No. 7393
29 WINSTON & CASHATT
30 Attorneys for Plaintiff American Bank

31 PLAINTIFF AMERICAN BANK'S MOTION
32 FOR PARTIAL SUMMARY JUDGMENT - 3

33 *Winston & Cashatt*
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VIA FEDERAL EXPRESS

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Attorney for Defendant Polin & Young Construction

PLAINTIFF AMERICAN BANK'S MOTION
FOR PARTIAL SUMMARY JUDGMENT - 4

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8	Co-Attorney for Plaintiff		
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	Ramsden & Lyons	VIA CERTIFIED MAIL	<input type="checkbox"/>
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	Young Revocable Trust		
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22	Attorney for Third Party Defendant Sundance Investments		


 ELIZABETH A. TELLESSEN

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26 PLAINTIFF AMERICAN BANK'S MOTION
 FOR PARTIAL SUMMARY JUDGMENT - 5

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1168

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 AUG 19 PM 4: 37

CLERK DISTRICT COURT

Molly Rosenbusch
DEPUTY *RS*

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ELIZABETH A. TELLESSEN, ISB #7393
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho

Case No. CV 09-2619

**NOTICE OF PLAINTIFF AMERICAN
BANK'S PARTIAL SUMMARY JUDGMENT
RE COUNT 5 OF ACI'S FIRST AMENDED
CROSS CLAIM**

With Oral Argument

Date: September 14, 2011

Time: 3:00 p.m.

Judge: Luster

NOTICE OF HEARING - 1

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1 limited liability company, THORCO, INC., an
2 Idaho corporation, CONSOLIDATED SUPPLY
3 COMPANY, an Oregon corporation,
4 INTERSTATE CONCRETE & ASPHALT
5 COMPANY, an Idaho corporation, CONCRETE
6 FINISHING , INC., an Arizona corporation, THE
7 TURF CORPORATION, an Idaho corporation,
8 WADSWORTH GOLF CONSTRUCTION
9 COMPANY OF THE SOUTHWEST, a Delaware
10 corporation, POLIN & YOUNG
11 CONSTRUCTION, INC., an Idaho corporation,
12 TAYLOR ENGINEERING, INC., a Washington
13 corporation, PRECISION IRRIGATION, INC.,
14 an Arizona corporation and SPOKANE
15 WILBERT VAULT CO., a Washington
16 corporation, d/b/a WILBERT PRECAST,

Defendants.

And

12 TAYLOR ENGINEERING, INC., a Washington
13 corporation,

Third-Party Plaintiff,

v.

16 ACI NORTHWEST, INC., an Idaho corporation;
17 STRATA, INC., an Idaho corporation; and
18 SUNDANCE INVESTMENTS, LLP, a limited
19 liability partnership,

Third-Party Defendants.

And

22 ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

v.

25 AMERICAN BANK, a Montana banking

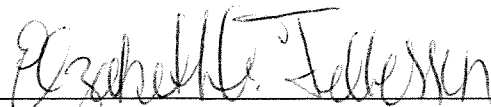
26 NOTICE OF HEARING - 2

1 corporation, BRN DEVELOPMENT, INC., an
2 Idaho corporation, BRN INVESTMENTS, LLC,
3 an Idaho limited liability company, LAKE VIEW
4 AG, a Liechtenstein company, BRN-LAKE
5 VIEW JOINT VENTURE, an Idaho general
6 partnership, ROBERT LEVIN, Trustee for the
7 ROLAND M. CASATI FAMILY TRUST, dated
8 June 5, 2008, E. RYKER YOUNG, Trustee for
9 the E. RYKER YOUNG REVOCABLE TRUST,
10 MARSHALL CHESROWN a single man,
11 THORCO, INC., an Idaho corporation,
12 CONSOLIDATED SUPPLY COMPANY, an
13 Oregon corporation, THE TURF
14 CORPORATION, an Idaho corporation,
15 WADSWORTH GOLF CONSTRUCTION
16 COMPANY OF THE SOUTHWEST, a Delaware
17 corporation, POLIN & YOUNG
18 CONSTRUCTION, INC., an Idaho corporation,
19 TAYLOR ENGINEERING, INC., a Washington
20 corporation and PRECISION IRRIGATION,
21 INC., an Arizona corporation,

22 Cross Claim Defendants.

23 PLEASE TAKE NOTICE that counsel for Plaintiff American Bank, by and through its attorneys
24 of record, Nancy L. Isserlis and Elizabeth A. Tellessen of Winston & Cashatt, will bring on for hearing
25 its Motion for Partial Summary Judgment re: Court 5 of ACI's First Amended Cross Claim on
26 September 14, 2011 at 3:00 p.m. before the Honorable John P. Luster at the Kootenai County
Courthouse, 324 West Garden Avenue, Coeur d'Alene, Idaho 83814.

DATED this 14 day of August, 2011.


ELIZABETH A. TELLESSEN, ISB No. 7393
WINSTON & CASHATT
Attorneys for Plaintiff American Bank

NOTICE OF HEARING - 3

Winston & Cashatt
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 19 day of August, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

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Layman, Layman & Robinson, PLLP
601 South Division Street
Spokane, WA 99202

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VIA CERTIFIED MAIL ☐
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VIA FEDERAL EXPRESS ☐

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BRN-Lake View Joint Venture, Marshall Chesrown, Lake
View AG, and Robert Levin, Trustee For The Roland M. Casati
Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee
of the E. Ryker Young Revocable Trust

Barry Davidson
Davidson Backman Medeiros
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Spokane, WA 99201

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Investments, BRN-Lake View Joint Venture, Marshall
Chesrown, Lake View AG, and Robert Levin, Trustee For The
Roland M. Casati Family Trust, Dated June 5, 2008 and E.
Ryker Young, Trustee of the E. Ryker Young Revocable Trust

Charles B. Lempesis
Attorney at Law
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Post Falls, ID 83854

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Precision Irrigation Inc.

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Campbell Bissell
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Attorney for Defendant Polin & Young Construction

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Greg Embrey
Witherspoon, Kelley, Davenport & Toole
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Attorney for Defendant Taylor Engineering

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Co-Attorney for Plaintiff

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Attorney for Defendant Ryker Young, Trustee of the Ryker
Young Revocable Trust

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Attorney for Court Appointed Receiver

Steven C. Wetzel & Kevin P. Holt
James, Vernon & Weeks
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VIA FEDERAL EXPRESS ☐

Attorneys for Third Party Defendant ACI

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Attorney for Third Party Defendant Sundance Investments


ELIZABETH A. TELLESEN

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NOTICE OF HEARING - 5

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2011 AUG 19 PM 4:37

CLERK DISTRICT COURT

Molly Rosenbusch
DEPUTY

NANCY L. ISSERLIS, ISB #7331
ELIZABETH A. TELLESSEN, ISB #7393
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rap@moffatt.com & ccg@moffatt.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho

Case No. CV 09-2619

**AMERICAN BANK'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT RE COUNT 5 OF
ACI'S FIRST AMENDED CROSS CLAIM**

AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 1

ORIGINAL

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Phone: (208) 667-2103

1 limited liability company, THORCO, INC., an
2 Idaho corporation, CONSOLIDATED SUPPLY
3 COMPANY, an Oregon corporation,
4 INTERSTATE CONCRETE & ASPHALT
5 COMPANY, an Idaho corporation, CONCRETE
6 FINISHING, INC., an Arizona corporation, THE
7 TURF CORPORATION, an Idaho corporation,
8 WADSWORTH GOLF CONSTRUCTION
9 COMPANY OF THE SOUTHWEST, a Delaware
10 corporation, POLIN & YOUNG
11 CONSTRUCTION, INC., an Idaho corporation,
12 TAYLOR ENGINEERING, INC., a Washington
13 corporation, PRECISION IRRIGATION, INC.,
14 an Arizona corporation and SPOKANE
15 WILBERT VAULT CO., a Washington
16 corporation, d/b/a WILBERT PRECAST,

Defendants.

And

TAYLOR ENGINEERING, INC., a Washington
corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation;
STRATA, INC., an Idaho corporation; and
SUNDANCE INVESTMENTS, LLP, a limited
liability partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

v.

AMERICAN BANK, a Montana banking

AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 2

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Phone: (208) 667-2103

1 corporation, BRN DEVELOPMENT, INC., an
2 Idaho corporation, BRN INVESTMENTS, LLC,
3 an Idaho limited liability company, LAKE VIEW
4 AG, a Liechtenstein company, BRN-LAKE
5 VIEW JOINT VENTURE, an Idaho general
6 partnership, ROBERT LEVIN, Trustee for the
7 ROLAND M. CASATI FAMILY TRUST, dated
8 June 5, 2008, E. RYKER YOUNG, Trustee for
9 the E. RYKER YOUNG REVOCABLE TRUST,
10 MARSHALL CHESROWN a single man,
11 THORCO, INC., an Idaho corporation,
12 CONSOLIDATED SUPPLY COMPANY, an
13 Oregon corporation, THE TURF
14 CORPORATION, an Idaho corporation,
15 WADSWORTH GOLF CONSTRUCTION
16 COMPANY OF THE SOUTHWEST, a Delaware
17 corporation, POLIN & YOUNG
18 CONSTRUCTION, INC., an Idaho corporation,
19 TAYLOR ENGINEERING, INC., a Washington
20 corporation and PRECISION IRRIGATION,
21 INC., an Arizona corporation,

22 Cross Claim Defendants.

23 1. Relief Requested

24 ACI cannot maintain a personal action in equity against American Bank in an effort to recover its
25 alleged losses. ACI is entitled to pursue its contract claim against BRN Development and/or foreclose its
26 lien pursuant to IC §45-510. But, because American Bank did not have any contact with ACI, no
contract with ACI, request that it perform work on Black Rock North, or agree to compensate ACI for
the work done, ACI cannot maintain a personal action against it. ACI's equitable claims against
American Bank should be dismissed as a matter of law.

23 2. Background

24 American Bank commenced this action to foreclose its Mortgage against Black Rock North in April
25 2009. ACI was joined in the litigation as a third party defendant and asserted cross-claims against

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 3

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1 American Bank in June 2010. Since that time ACI has brought two motions to amend its cross-claims,
2 the second of which the court granted at the hearing held August 3, 2011, at 3:00p.m. As of the date of
3 this memorandum the court has not entered an order, nor has ACI filed its amended pleading, except that
4 the amended pleading is a part of the court's record as Exhibit "A" to ACI's Motion for Leave to Amend
5 Answer and Cross-Claim.¹ American Bank requests this court dismiss Count 5 of the amended cross-
6 claim on summary judgment seeking equitable relief and a personal judgment against American Bank.

7 **3. Issues Presented**

8 3.1 Whether ACI is barred as a matter of law from maintaining a personal action against
9 American Bank.

10 3.2 Whether American Bank has established that ACI cannot make a prima facie case that
11 American Bank was unjustly enriched.

12 3.3 Whether ACI's other equitable claims should be dismissed as a matter of law because it
13 cannot prove a prima facie case for the claims of quantum meruit, waiver and equitable estoppel.

14 3.4 Whether American Bank is entitled to an award of costs, expenses and reasonable
15 attorneys' fees pursuant to Idaho Code §12-120(3) and/or §12-121.

16 **4. Undisputed Facts**

17 4.1 BRN Development, the owner and developer of the property commonly referred to as
18 Black Rock North, contracted with ACI Northwest, formerly known as Aapex Construction, Inc., to
19 perform labor and furnish material for the construction of a residential and golf course community
20 (herein "ACI/BRN Contract"). (Dep. W. Radobenko p. 8 l. 24 – p. 9 l. 7)

21 4.2 Prior to beginning significant work on Black Rock North Mr. Radobenko, owner of ACI,
22 received assurances from Marshall Chesrown, the manager of BRN Development, that he had sufficient
23
24

25 ¹ American Bank reserves the right to amend this memorandum to conform to the pleading once filed.

1 financing to pay for the work contemplated in the ACI/BRN Contract. (30(b)(6) Dep. ACI—W.
2 Radobenko, pp. 64 l. 23 – 65 l. 6)

3 4.3 Mr. Radobenko relied on Mr. Chesrown's statements that he had sufficient financing to
4 develop Black Rock North, and therefore pay ACI. (30(b)(6) Dep. ACI—W. Radobenko, p.66 l. 21 – p.
5 67 l. 4). Mr. Radobenko did not exercise his practice of calling a lender as a reference prior to
6 contracting to confirm that the person he is contracting with has the ability to pay. (Dep. W. Radobenko
7 p. 21 l. 6 – p. 23 l. 15)
8

9 4.4 Mr. Radobenko specifically testified:

10 Q. [by Mr. Wetzel]...would you have done the work for Marshall Chesrown just
11 based upon Marshall's statement that he was going to pay for the job?

12 A. Yes.

13 Q. Oh, you would have?

14 A. Sure.

15 Q. Why?

16 A. Because he's always paid us in the past.... I might have asked him where is he
17 going to get the money, but if Marshall said he was going to pay, I wouldn't have
18 worried about it.

19 (30(b)(6) Dep. ACI—W. Radobenko p. 84 ll. 6-17)

20 4.5 Mr. Radobenko never had any discussions with anyone from American Bank about the
21 loan to BRN Development. (30(b)(6) Dep. ACI—W. Radobenko, p. 65 ll. 16-18; p. 67 l. 23 – p. 68 l. 1;
22 p. 71 ll. 10-15; p. 72 ll. 14-19) ACI never asked BRN Development to see the Loan Documents while
23 conducting work on Black Rock North. (Dep. W. Radobenko, p. 25 ll. 16; p. 26 ll. 7-9). Instead, ACI
24 relied completely on Mr. Chesrown's representations that American Bank was going to lend BRN
25 Development \$50,000,000. (30(b)(6) Dep. ACI—W. Radobenko p. 84 ll. 6-17).

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 5

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1 4.6 Although Mr. Chesrown may have told Mr. Radobenko that American Bank had agreed
2 to loan \$50,000,000 to develop Black Rock North, it is undisputed American Bank had only agreed to
3 loan BRN Development \$15,000,000. (30(b)(6) Dep. ACI—W. Radobenko, p.59 ll. 13-22; pp. 64 l. 23 –
4 p. 65 l. 6; p. 71 ll. 10-15; p. 72 ll. 14-19)

5 4.7 Mr. Chesrown knew that American Bank would require significant equity in the property
6 above the loan amount. In particular, Mr. Chesrown stated “[s]o we all knew all along regardless of
7 whether it was the 15 million—whatever the numbers we were talking about, it was always going to
8 have to be supported to a 65 percent loan to value on appraisal.” (30(b)(6) Dep. BRN Development p.41
9 ll. 22-25; see also p. 134 ll. 13-23)

10 4.8 American Bank received its first appraisal of Black Rock North in December, 2006,
11 which revealed the as-is market value of Black Rock North was \$20,000,000. (Aff. B. Klein, ¶ 2,
12 Exhibit AB – A (AB001980-84). Based on this appraisal, American Bank agreed to a 75:25 loan to
13 value ratio and loaned BRN Development \$15,000,000. (Aff. B. Klein, ¶ 3)

14 4.9 Mr. Chesrown testified that BRN Development fully intended to be bound by the terms
15 of the American Bank Note and Mortgage at the time those were signed, and which bound American
16 Bank to lend no more than \$15,000,000 to BRN Development at any given time. (Aff. of E. Tellessen,
17 Exhibit AB-3, 30(b)(6) Dep. BRN Development p. 15 ll. 4-18, p. 16 ll. 9-20; Aff. B. Klein ¶ 3)

18 4.10 This loan was a \$15,000,000 revolving line of credit and over its term American Bank
19 made advances, as requested and agreed, to BRN Development totaling \$18,525,000. BRN
20 Development made \$3,925,000 in principal reductions over the life of the loan. (Aff. B. Klein, ¶ 4; Aff
21 E. Tellessen ¶ 4, 30(b)(6) Dep. BRN Development p. 33 ll. 9-12). This loan was secured by the
22
23
24
25

1 Mortgage, Security Agreement and Fixture Filing (herein "Mortgage") dated February 2, 2007 and was
2 recorded on February 6, 2007, with the Kootenai County Assessor under Instrument No. 2081643000.

3 4.11 But, despite American Bank having loaned BRN Development \$15,000,000 there were
4 times when BRN Development failed to pay ACI. Nevertheless, ACI continued to perform work on
5 Black Rock North despite BRN Development's periodic failure to pay. (Aff E. Tellessen ¶ 2, 30(b)(6)
6 Dep. ACI—W. Radobenko, p. 42 ll. 14-23)
7

8 4.12 By January 2009, BRN Development was in default under the terms of the Loan
9 Documents. (Aff. B. Klein, ¶ 5, Exhibit AB – B, (AB002438). And, on April 1, 2009 American Bank
10 commenced this action to foreclose its Mortgage.

11 4.13 In September 2009, American Bank received another appraisal of Black Rock North
12 which revealed its as-is value had declined from \$20,000,000 to \$15,000,000. (Aff. B. Klein, ¶ 6,
13 Exhibit AB – D (AB004721-AB004722). Therefore, in an effort to retain what value remained in Black
14 Rock North, American Bank agreed to fund the expenses of a receiver charged with the duty to preserve
15 and protect Black Rock North.
16

17 4.14 However, despite the efforts and expenses of the receiver the as-is value of Black Rock
18 North declined further from \$15,000,000 to \$12,000,000 by October 2010. (Aff. B. Klein, ¶ 7, Exhibit
19 AB – E (AB004910 – AB004911)
20

21 4.15 American Bank was granted summary judgment finding it was the first lien holder on
22 Black Rock North and ordering foreclosure of the Mortgage, and the judgment was thereafter entered
23 and executed upon by the Sheriff. (Aff. E. Tellessen ¶ 5)

24 4.16 At the Sheriff's sale, American Bank was the only bidder and made a credit bid in the
25 amount of the foreclosure judgment, which was over \$18,000,000. (Aff. E. Tellessen, ¶ 6)

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 7

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1 4.17 Following the sale the Sheriff issued American Bank a Sheriff's Sale Certificate, but not
2 until the one year redemption period has expired will the Sheriff issue a deed that will vest fee simple
3 title in American Bank.

4 **5. Legal Authority**

5 Idaho law precludes a finding that American Bank is personally liable for the losses allegedly
6 suffered by ACI. The remedies available to ACI include its right to pursue BRN Development under the
7 terms of the ACI/BRN Contract, or foreclose its lien against the bond, which replaced Black Rock North
8 as security for the lien. Even if ACI could establish a basis for it to obtain a personal judgment against
9 American Bank, the equitable claims it has asserted each fail as a matter of law, rendering summary
10 judgment appropriate.
11

12 Summary judgment should be granted where the moving party shows through "the pleadings,
13 depositions, and admissions on file, together with affidavits" that there is no genuine issue of material
14 fact and that the non-moving party's claims should be dismissed as a matter of law. I.R.C.P. 56(c). Once
15 the moving party has established a lack of genuine issues of fact for trial the burden shifts to the non-
16 moving party to come forward with more than just conclusory assertions or a scintilla of evidence. Van
17 v. Portneuf Medical Center, 147 Idaho 552, 212 P.3d 982 (2009). Instead it must come forward with
18 evidence of "specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e), e.g. Venters v.
19 Sorrento Delaware, Inc., 141 Idaho 245, 108 P.3d 392 (2005).
20
21

22 The facts here are undisputed because ACI concedes that American Bank never made any
23 representations to it, and that it relied wholly on the representations of Mr. Chesrown, precluding any
24 right to pursue American Bank as a matter of law. Nonetheless, ACI asks the court to exercise its
25 equitable powers and hold American Bank liable for its alleged losses, which were only incurred
26

AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
CLAIM - 8

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1 because BRN Development failed to perform as agreed under the ACI/BRN Contract. This result would
2 be contrary to the law of Idaho and the principles of equity, and accordingly, American Bank asks this
3 court to grant its motion for partial summary judgment and dismiss ACI's equitable claims against
4 American Bank.

5
6 **5.1 There is no relationship or contractual privity between American Bank and ACI
and thus no basis for a personal judgment against American Bank.**

7 American Bank exercised its contractual and legal right to foreclose its Mortgage on Black Rock
8 North. The foreclosure culminated in the Sheriff selling Black Rock North at a public auction, at which
9 American Bank made a credit bid for the amount of the foreclosure judgment, which was more than
10 \$18,000,000. There were no other bidders at the sale. As such, American Bank or its successor in
11 interest will take title to Black Rock North unless BRN Development or a junior creditor exercises its
12 right to redeem the property. It is American Bank's taking title to Black Rock North, with the
13 improvements made by ACI and others, that ACI argues operates as an injustice and inequity to ACI.
14 However, ACI's allegations that American Bank and its "joint ventures, partners, or investors" have
15 acted unjustly, inequitably and inappropriately in their efforts to collect their collateral, Black Rock
16 North—aside from being wholly inaccurate—do not establish a legal or factual basis upon which a
17 judgment could be entered against American Bank.

18
19 A bedrock principle of equity is that "[e]quitable claims will not be considered when an adequate
20 legal remedy is available." Iron Eagle Development, LLC v. Quality Design Systems, Inc., 138 Idaho
21 487, 492, 65 P.3d 509 (2003). In Iron Eagle Development a lease agreement bound the lessor to
22 contract for the construction of the leased space. Id. at 490. Although the lessee was aware of the
23 contract between the lessor and the contractor, the contractor was not entitled to sue the lessee in equity

1 where it had a legal remedy under its express agreement with the lessor. Id. at 492. The same analysis
2 applies to the case at bar.

3 ACI has an express agreement with BRN Development, and is entitled to pursue its legal remedy
4 for breach of the ACI/BRN Contract. Furthermore, ACI had the right to further protect its interests by
5 obtaining personal guaranties or conducting some due diligence to ensure BRN Development had the
6 wherewithal to satisfy its contractual obligations. Its failure to do so does not create a basis for it to seek
7 equity from this court by way of a judgment against American Bank. Such a result would undermine the
8 law of contracts by excusing a party from striking a bad deal and forcing a third party to answer for the
9 debt of another.
10

11 For instance, if ACI did have a contract with American Bank, or was a third party beneficiary of
12 the Loan Documents there is no question it would be barred from seeking an equitable remedy based on
13 the allegation that American Bank agreed to loan more money than it did. This bar would be two-fold:
14 first, the integration clause set out in paragraph 8.12 of the Revolving Credit Agreement would bar it
15 from asserting or relying on any prior negotiations to alter or amend the terms of the contract; second,
16 the statute of frauds would bar it from enforcing a promise to lend money. I.C. § 9-505(5) Moreover,
17 the statute of frauds bars ACI from claiming American Bank agreed to answer for the debt of BRN
18 Development. I.C. §9-505(2) The law protects ACI by enforcing its contract with BRN Development, or
19 if the statutory requirements are satisfied it may file a lien securing the amount it is owed. But, ACI
20 cannot as a matter of law pursue equitable claims or obtain a personal judgment against American Bank,
21 and those claims should be dismissed as a matter of law.
22

23 Additionally, more than a century ago, the Idaho legislature granted a contractor the ability to
24 protect its interests by giving it the right to secure a debt owed to it for the labor and materials provided
25

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1 for the improvement of real property. I.C. §45-501-545. So long as the contractor establishes the
2 validity, amount and priority of its lien its debt is secured, in addition, the contractor retains its right to
3 "maintain a personal action to recover such debt against the person liable therefore." I.C. §45-515.
4 Idaho courts have routinely held that a prerequisite to maintaining a personal action is the presence of
5 contractual privity. See Mitchell v. Flandro, 95 Idaho 228, 233, 506 P.2d 455 (1972); Pierson v. Sewell,
6 97 Idaho 38, 43-44, 539 P.2d 590 (1975).
7

8 ACI has recorded its claim of lien, and subject to its proving that it has satisfied all of the
9 statutory requirements, it could collect on its security, in this case the lien bond that was posted pursuant
10 to Idaho Code section 45-518. But, ACI has no right to maintain a personal action against American
11 Bank to collect a debt for the work it performed and materials it furnished to BRN Development. In
12 sum, ACI has at least two viable claims available, breach of contract against BRN Development and
13 foreclosure of its claim of lien, and it should not be allowed to bring other equitable claims that would
14 alter the well-established law of secured transactions that provides for an orderly determination or
15 priority to competing claims against the same collateral.
16

17 **5.2 Unjust enrichment is not available as a remedy to save a party from a bad business**
18 **deal.**

19 Even if ACI is entitled to pursue a personal judgment against American Bank, it cannot do so
20 under the doctrine of unjust enrichment. The doctrine of unjust enrichment is based on a fictional
21 promise or obligation, implied by law, which allows a claimant to recover where it has conferred a
22 benefit upon another party and where it would be inequitable for the party to retain the benefit without
23 paying the value of the benefit. Great Plains Equipment, Inc. v. Northwest Pipeline Corp., 132 Idaho
24 754, 767, 979 P.2d 627 (citing Continental Forest Products, Inc. v. Chandler Supply Co., 95 Idaho 739,
25

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
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1 743, 518 P.2d 1201 (1974)). But, "a party cannot recover under the equitable theory of unjust
2 enrichment where there is an enforceable express contract covering the same subject matter." Blaser v.
3 Cameron, 121 Idaho 1012, 1017, 829 P.2d 1361 (1991).

4 There is no dispute that there was neither a contract nor contractual privity between American
5 Bank, the lender, and ACI, the contractor. ACI's legal remedy is to maintain a breach of contract action
6 against BRN Development. It cannot pursue a claim for unjust enrichment against American Bank as a
7 matter of law.
8

9 Even if American Bank was the fee-simple owner of Black Rock North, ACI would still not be
10 entitled to pursue a claim for unjust enrichment. Unjust enrichment is not available to a "subcontractor
11 who lacks a contractual relationship directly with a property owner." Great Plains Equipment, 132 Idaho
12 at 767 (citing Dale's Service Co., Inc. v. Jones, 96 Idaho 662, 534 P.2d 1102 (1975)).

13 ACI argues that the court should exercise its equitable powers to rescue it from a bad business
14 deal. But as Idaho's Supreme Court recently recognized unjust enrichment "does not operate to rescue a
15 party from the consequences of a bargain which turns out to be a bad one." Independent School District
16 of Boise City v. Harris Family Ltd. Partnership, 150 Idaho 583, 589, 249 P.3d 382 (2011). Accordingly,
17 the court should not use equity to give ACI a better deal than it bargained for. ACI knowingly entered
18 into agreements with BRN Development based on Mr. Radobenko's trust of Mr. Chesrown. Because of
19 this trust Mr. Radobenko and ACI did not exercise any diligence to confirm that BRN Development had
20 enough money to pay for the work being contracted for. ACI did not contact American Bank to confirm
21 the amount of money available to BRN Development, ACI did not review the Mortgage or request to see
22 the Loan Documents, ACI did not request or obtain additional contractual protection in the form of a
23
24
25

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
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1 personal guaranty. Yet, ACI comes to the court seeking equity in order to obtain a better deal than it had
2 with BRN Development.

3 American Bank asks this court to dismiss ACI's claim of unjust enrichment as a matter of law
4 because in the absence of contractual privity and the presence of adequate and unexhausted legal
5 remedies there is no equitable basis to put ACI in a better position than what it freely bargained for..

6
7 **5.3 Moreover, ACI cannot make a prima facie case of unjust enrichment and the claim
8 should be dismissed.**

9 There are three elements that must be proven in order to prevail on a claim for unjust enrichment:
10 "(1) a benefit is conferred upon the defendant by the plaintiff; (2) an appreciation by the defendant of the
11 benefit; and (3) acceptance of the benefit in circumstances that make it inequitable for the defendant to
12 retain the benefit without payment to the plaintiff for the value thereof." Brewer v. Washington RSA
13 No. 8 Limited Partnership, 145 Idaho 735, 739, 184 P.3d 860 (2008). When the elements of unjust
14 enrichment have been satisfied a plaintiff is not entitled to judgment for the entire enrichment, but only
15 that portion of the enrichment that it is unjust for the defendant to retain in the circumstances. Barry v.
16 Pacific West Const. Inc., 140 Idaho 827, 834, 103 P.3d 440 (2004).

17
18 ACI alleges that American Bank has been unjustly enriched because it could take title to Black
19 Rock North without ACI being paid in full for the work it did on the property. This argument fails on at
20 least two levels. First, it is undisputed there has been no enrichment of American Bank because despite
21 the work done on Black Rock North by each of the contractors, including ACI, the value of the property
22 has continued to decline. Second, at no time has American Bank acted inequitably or unjustly. It simply
23 exercised its contractual and legal rights to foreclose its Mortgage and potentially recover its collateral.
24

1 In light of this, ACI cannot satisfy two of the essential elements of an unjust enrichment claim, and that
2 claim should be dismissed as a matter of law.

3 Furthermore, the measure of damages for a claim of unjust enrichment based on the
4 improvement of real property "is not the value of the money, labor and materials supplied to increase the
5 value of the estate, but rather the amount of enrichment which results from that money, labor and
6 services which would be unjust for the enriched party to retain." Nielson v. Davis, 96 Idaho 314, 315-16,
7 528 P.2d 196 (1974). There has been no enrichment of American Bank with regard to Black Rock
8 North.
9

10 Before any significant construction took place on Black Rock North the as-is appraised value
11 was \$20,000,000. Based on this value American Bank loaned BRN Development \$15,000,000. After
12 American Bank commenced foreclosure, the as-is appraised value of Black Rock North was
13 \$15,000,000. Since that time American Bank has expended considerable sums to preserve the value of
14 the property. Yet, despite these efforts, the 2010 as-is appraised value of the property sunk to
15 \$12,000,000. Although ACI provided labor and material for construction on the property pursuant to its
16 agreement with BRN Development, this work has not increased the value of the property, and American
17 Bank has not been enriched. Therefore, ACI cannot make a prima facie case for unjust enrichment and
18 the claim fails as a matter of law.
19

20 Furthermore, if American Bank had been enriched it has not acted unjustly or inequitably with
21 regard to ACI. American Bank has acted within its rights to foreclose its Mortgage and is entitled to take
22 the collateral pledged for the loan it made—this is not unjust or inequitable. ACI's cry of inequity based
23 on American Bank's foreclosing its collateral flies in the face of the established practices and
24 expectations in construction contracting and lending. Allowing ACI to proceed with a claim for unjust
25

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
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1 enrichment would create a precedent that exposes every foreclosing lienholder or subsequent owner to
2 personal judgments for unsatisfied lien claims properly foreclosed. Never in the history of the law has
3 equity been used to circumvent the axiomatic effect of a proper foreclosure, and it should not be so used
4 here.

5
6 **5.4 ACI is not entitled to recover from American Bank under a theory of quantum meruit.**

7 The distinction between a claim of unjust enrichment and quantum meruit is that unjust
8 enrichment is the means of recovery where there is a contract implied in law and quantum meruit is the
9 means of recovery where there is a contract implied in fact. Barry, 140 Idaho at 834. Additionally,
10 “[t]he remedy of quantum meruit is based upon the principle that ‘one who provides services should
11 receive the compensation he or she deserves.’” Baker v. Boren, 129 Idaho 885, 894, 934 P.2d 951
12 (2003)(quoting Shacocass, Inc. v. Arrington Const. Co., 116 Idaho 460, 464, 776 P.2d 469 (Ct. App.
13 1989)). Quantum meruit “is used to compensate a person who has performed services at the request of
14 another,” and recovery is based on a contract implied in fact. Baker, 129 Idaho at 894. ACI’s claim for
15 quantum meruit should be dismissed as a matter of law because there are no circumstances from which
16 one could infer a contract implied in fact.
17

18
19 A contract implied in fact is found “where there is no express agreement, but the parties’ conduct
20 evidences an agreement.” Barry, 140 Idaho at 834. Generally, “where the conduct of the parties allows
21 the dual inferences that one party performed at the other’s request and that the requesting party promised
22 payment, then the court may find a contract implied in fact.” Fox v. Mountain West Elec. Inc., 137
23 Idaho 703, 708, 52 P.3d 848 (2002). However, “the facts must be such that the intent to make a contract
24 may be fairly inferred.” Baker, 129 Idaho at 891.
25

26 AMERICAN BANK’S MEMORANDUM IN SUPPORT OF SUMMARY
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1 Here, there was no direct contact between ACI and American Bank from which one could infer a
2 contract implied in fact. ACI's president, Mr. Radobenko, conceded in his deposition that he did not
3 have any discussions with anybody at American Bank related to ACI's work on Black Rock North.
4 There is no evidence or allegation that American Bank requested ACI perform work on Black Rock
5 North, let alone an allegation that American Bank agreed to pay ACI for the work it performed.
6 Accordingly, there is no genuine issue of material fact that would support a claim for quantum meruit or
7 a contract implied in fact and this claim should be dismissed as a matter of law.
8

9 **5.5 American Bank has not waived or relinquished any known right.**

10 ACI alleges American Bank has waived some unidentified right. Without identifying the right
11 waived, one cannot infer the consequences of the alleged waiver. As such, this is not a claim upon which
12 relief can be granted. I.R.C.P. 12(b)(6). Nevertheless, "a waiver is a voluntary and intentional
13 relinquishment of a known right and the party asserting the waiver must show that it acted in reasonable
14 reliance upon it and that the party thereby altered its position to its detriment." ADA County Highway
15 District v. Total Success Investments, LLC, 145 Idaho 360, 370, 179 P.3d 323, 333 (2008). And, Idaho
16 disfavors the doctrine of implied waiver by silence. Seaport Citizens Bank v. Dipple, 112 Idaho 720,
17 739, 735 P.2d 1047 (1987). In fact, "[w]aiver will not be inferred except from a clear and unequivocal
18 act manifesting intent to waive or from conduct amounting to estoppel." Dipple, 112 Idaho at 739.
19

20 American Bank has not waived any known right, either by action or inaction, because it lacks the
21 requisite intent. For instance, if the accusation is that American Bank waived some right in regard to
22 BRN Development or the Loan Documents, American Bank would have to have voluntarily and
23 intentionally done so. There is no showing that American Bank intended to do so and, thus, there can be
24 no waiver. In fact, the loan documents indicated a contrary intention, specifically the Credit Agreement
25

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
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1 between American Bank and BRN Development expressly states that there will be "no...waiver of any
2 provision of th[e] agreement...unless in writing signed by the lender." (Aff. B. Klein ¶ 5, Exhibit AB-C)
3 American Bank did not execute a written waiver of any known right that it possessed or presently
4 possesses. Moreover, because there was no interaction between American Bank and ACI, there are no
5 facts from which the inference of waiver by American Bank may be fairly drawn by ACI. There is a
6 complete absence of any facts to support a claim of waiver and that claim, too, should be dismissed as a
7 matter of law.
8

9 **5.6 ACI cannot establish any facts to support the theory that American Bank should be**
10 **equitably estopped and its claim should be dismissed.**

11 This court has previously recognized the proposition that equitable estoppel may be used only as
12 a shield in defense, not as a sword by a plaintiff. See Gessner v. GMAC Ins., 2003 WL 23914535 (Idaho
13 2003)(citing Klinke v. Famous Recipe Fried Chicken, 94 Wn.2d 255, 616 P.2d 644 (1980)). But, that is
14 precisely what ACI aims to do in this case and it should not be allowed.

15 Moreover, ACI cannot satisfy key elements of equitable estoppel, which makes dismissal of the
16 claim appropriate. In order to proceed to trial on the theory of equitable estoppel, the party asserting
17 estoppel must show "(1) a false representation or concealment of a material fact with actual or
18 constructive knowledge of the truth; (2) the party asserting estoppel did not know or could not discover
19 the truth; (3) the false representation or concealment was made with the intent that it be relied upon; and
20 (4) the person to whom the representation was made or from whom the facts were concealed, relied and
21 acted upon the representation or concealment to his [or her] prejudice." Young Electric Sign Co. v. State
22 ex rel. Winder, 135 Idaho 804, 810, 25 P.3d 117 (2001).
23
24
25

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1 First, it is undisputed that American Bank has not falsely represented or concealed a material
2 fact. Equitable estoppel requires that there be a "false representation or concealment of a material fact
3 with actual or constructive knowledge of the truth." Young Electric Sign Co., 135 Idaho at 810. The
4 record is devoid of any facts which could establish a misrepresentation by American Bank. Rather, ACI
5 admits all representations it received were from Mr. Chesrown. Since Mr. Chesrown has never been an
6 agent of American Bank, nor did he have any right or authority to speak on its behalf, his statements
7 cannot form a basis for equitable estoppel against American Bank.
8

9 Additionally, there was no concealment of American Bank's rights or intent. American Bank
10 recorded its Mortgage, which disclosed the loan to BRN Development was only \$15,000,000. Then,
11 following BRN Development's default, it pursued judicial foreclosure of the same—a process that has at
12 all times been transparent, and in which ACI has participated. Consequently, there is no genuine issue of
13 material fact as to the first element and ACI cannot meet its burden to make a prima facie case of
14 equitable estoppel.
15

16 It is undisputed that ACI did not make any effort to verify what American Bank had agreed to
17 loan BRN Development. It relied solely on the representations of Mr. Chesrown and made no effort to
18 discover the truth behind this representation. Young Electric Sign Co., 135 Idaho at 810. Assuming that
19 a material misrepresentation was made, ACI took no steps to verify how much American Bank loaned to
20 BRN Development. ACI never asked BRN Development to see the Loan Documents. Instead, ACI
21 relied completely on Mr. Chesrown's representations that American Bank was going to lend BRN
22 Development \$50,000,000. ACI could have easily discovered the actual terms of the loan by reviewing a
23 copy of the Mortgage recorded in the public records, but Mr. Radobenko admits that he did not. It is
24 well settled that one cannot claim ignorance of matters of record effecting title to property in which it
25

26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
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1 has an interest. Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970 (2001). Accordingly, ACI
2 cannot meet the second element of equitable estoppel because it could have discovered the truth behind
3 the misrepresentation made by Mr. Chesrown and as a result its equitable estoppel claim fails as a matter
4 of law.

5
6 Finally, the third and fourth elements require that the party asserting equitable estoppel prove
7 that a false representation or concealment was made with the intent that it be relied upon and the party to
8 whom the representation was made or from whom the facts were concealed did in fact rely and act to its
9 detriment. Young Electric Sign Co., 135 Idaho at 810. ACI admits that it relied solely on Marshall
10 Chesrown's misrepresentation that \$50,000,000 was available to BRN Development to finance the
11 construction project. ACI further admits that it had no communication whatsoever with American Bank.
12 The third element of equitable estoppel is not satisfied because there was no representation made by
13 American Bank and, thus, the requisite intent that ACI rely on the misrepresentation is irrefutably
14 absent. And, in the absence of a representation by American Bank there cannot be reliance.
15

16 ACI's claim for equitable estoppel fails on two incurable grounds. First, it is not a proper
17 affirmative claim where no claim has been asserted against it. Second, the record is devoid of facts to
18 establish the existence of any of the essential elements, most notably the absence of any representation
19 by American Bank to ACI. This claim should be dismissed as a matter of law.
20

21 **5.7 American Bank is entitled to attorneys' fees.**

22 American Bank should be awarded the attorneys' fees it has incurred in defending the various
23 tort and equitable claims ACI has asserted against it. ACI's claims arise from a commercial transaction
24 and American Bank is entitled to collect the attorneys' fees incurred in defending the same if it is the
25 prevailing party on this motion. IC § 12-120(3). Additionally, because ACI's claims are not well
26

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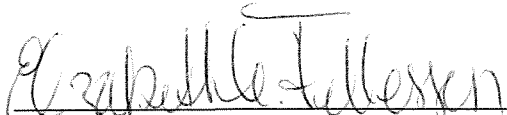
1 grounded in fact or warranted by the law, but were apparently pursued for the purpose of harassing
2 American Bank and causing it to incur additional expenses in this litigation, attorneys' fees are also
3 appropriate under Idaho Code section 12-121.

4 If the court grants American Bank's motion, then it requests leave to supplement the record with
5 an affidavit of attorneys' fees and costs prior to entry of judgment on this matter.
6

7 **6. Conclusion**

8 There is no equitable basis upon which ACI can maintain a personal action against American Bank.
9 The avenues of recourse available to ACI are deeply rooted in the law of the state of Idaho and include
10 its right to foreclose its contractor's lien pursuant to Idaho Code section 45-510, as well as its right to
11 pursue a breach of contract claim against BRN Development. Therefore, ACI's equitable claims against
12 should be dismissed as a matter of law.
13

14 DATED this 19 day of August, 2011.

15 
16 ELIZABETH A. TELLESSEN, ISB No. 7393
17 WINSTON & CASHATT
18 Attorneys for Plaintiff American Bank
19
20
21
22
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 19 day of August, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

John R. Layman
Layman, Layman & Robinson, PLLP
601 South Division Street
Spokane, WA 99202

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Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee of the E. Ryker Young Revocable Trust

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Davidson Backman Medeiros
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Attorney for Defendant Polin & Young Construction

AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS CLAIM - 21

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| 4 | Attorney for Defendant Taylor Engineering | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
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| 11 | Attorney for Defendant Ryker Young, Trustee of the Ryker | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 12 | Young Revocable Trust | | |
| 13 | Rick Harris | VIA REGULAR MAIL | <input type="checkbox"/> |
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| 15 | Attorney for Court Appointed Receiver | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
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| 18 | Attorneys for Third Party Defendant ACI | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| | | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 19 | Corey J. Rippee | VIA REGULAR MAIL | <input type="checkbox"/> |
| 20 | Eberle, Berlin, Kading, Turnbow, McKlveen | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| | P.O. Box 1368 | HAND DELIVERED | <input type="checkbox"/> |
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| 22 | Attorney for Third Party Defendant Sundance Investments | | |


 ELIZABETH A. TELLESSEN

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26 AMERICAN BANK'S MEMORANDUM IN SUPPORT OF SUMMARY
JUDGMENT RE COUNT 5 OF ACI'S FIRST AMENDED CROSS
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CLERK DISTRICT COURT

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DEPUTY *10*

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho
limited liability company, THORCO, INC., an

Case No. CV 09-2619

**AFFIDAVIT OF ELIZABETH A.
TELLESSEN IN SUPPORT OF AMERICAN
BANK'S MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT RE COUNT 5 OF
ACT'S FIRST AMENDED CROSS CLAIM**

AFFIDAVIT OF ELIZABETH A. TELLESSEN - 1

ORIGINAL
194

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

1 Idaho corporation, CONSOLIDATED SUPPLY
2 COMPANY, an Oregon corporation,
3 INTERSTATE CONCRETE & ASPHALT
4 COMPANY, an Idaho corporation, CONCRETE
5 FINISHING, INC., an Arizona corporation, THE
6 TURF CORPORATION, an Idaho corporation,
7 WADSWORTH GOLF CONSTRUCTION
8 COMPANY OF THE SOUTHWEST, a Delaware
9 corporation, POLIN & YOUNG
10 CONSTRUCTION, INC., an Idaho corporation,
11 TAYLOR ENGINEERING, INC., a Washington
12 corporation, PRECISION IRRIGATION, INC.,
13 an Arizona corporation and SPOKANE
14 WILBERT VAULT CO., a Washington
15 corporation, d/b/a WILBERT PRECAST,
16 Defendants.

17 And

18 TAYLOR ENGINEERING, INC., a Washington
19 corporation,

20 Third-Party Plaintiff,

21 v.

22 ACI NORTHWEST, INC., an Idaho corporation;
23 STRATA, INC., an Idaho corporation; and
24 SUNDANCE INVESTMENTS, LLP, a limited
25 liability partnership,

26 Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

v.

AMERICAN BANK, a Montana banking
corporation, BRN DEVELOPMENT, INC., an
Idaho corporation, BRN INVESTMENTS, LLC,

AFFIDAVIT OF ELIZABETH A. TELLESSEN - 2

1 an Idaho limited liability company, LAKE VIEW
2 AG, a Liechtenstein company, BRN-LAKE
3 VIEW JOINT VENTURE, an Idaho general
4 partnership, ROBERT LEVIN, Trustee for the
5 ROLAND M. CASATI FAMILY TRUST, dated
6 June 5, 2008, E. RYKER YOUNG, Trustee for
7 the E. RYKER YOUNG REVOCABLE TRUST,
8 MARSHALL CHESROWN a single man,
9 THORCO, INC., an Idaho corporation,
10 CONSOLIDATED SUPPLY COMPANY, an
11 Oregon corporation, THE TURF
12 CORPORATION, an Idaho corporation,
13 WADSWORTH GOLF CONSTRUCTION
14 COMPANY OF THE SOUTHWEST, a Delaware
15 corporation, POLIN & YOUNG
16 CONSTRUCTION, INC., an Idaho corporation,
17 TAYLOR ENGINEERING, INC., a Washington
18 corporation and PRECISION IRRIGATION,
19 INC., an Arizona corporation,

20 Cross Claim Defendants.

21 ^{Idaho}
22 STATE OF ~~WASHINGTON~~)
23 : ss.
24 County of ^{Kootenai} ~~Spokane~~)

25 I, Elizabeth A. Tellessen, being first duly sworn on oath deposes and says:

26 1. I am one of the attorneys for Plaintiff America Bank.

27 2. Attached as **Exhibit AB-1** is a copy of the portions of the 30(b)(6) depositions transcript
28 of ACI Northwest, Inc., designee, William Charles Radobenko taken March 8, 2011, cited in American
29 Bank's Memorandum in Support of its Motion for Partial Summary Judgment Re Count 5 of ACI's First
30 Amended Cross Claim.

31 3. Attached as **Exhibit AB-2** is a copy of the portions of the depositions transcript William
32 Radobenko taken August 15, 2011, cited in American Bank's Memorandum in Support of its Motion for
33 Partial Summary Judgment Re Count 5 of ACI's First Amended Cross Claim.

34 AFFIDAVIT OF ELIZABETH A. TELLESSEN - 3

35 *Winston & Cashatt*
36 A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

1 4. Attached as **Exhibit AB-3** is a copy of the portions of the 30(b)(6) depositions transcript
2 of BRN Development, Inc., designee Marshall Chesrown, taken on June 23, 2010, cited in American
3 Bank's Memorandum in Support of its Motion for Partial Summary Judgment Re Count 5 of ACI's First
4 Amended Cross Claim.

5 5. Attached as **Exhibit AB - 4** is a copy of the Judgment and Decree of Foreclosure of
6 American Bank's Mortgage Secured by Black Rock North, entered on February 24, 2011 and recorded
7 with the Kootenai County Recorder under Instrument #2305927000 on March 11, 2011.
8

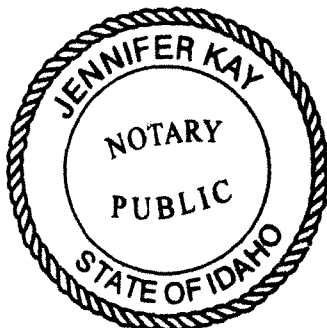
9 6. I attended in person the Sheriff's Sale of Black Rock North and made the credit bid in the
10 amount of \$18,682,767.78 on behalf of American Bank. No other bidders came forward at the time of
11 the sale.


12 7. No junior creditor has exercised its right to redeem Black Rock North as of the date of
13 this affidavit. The period for redemption does not expire until May 18, 2012.
14

15 DATED this 19 day of August, 2011.

16 
17 ELIZABETH A. TELLESSEN, ISB No. 7393
18 WINSTON & CASHATT
19 Attorneys for Plaintiff

20 SUBSCRIBED AND SWORN TO before me this 19th day of August, 2011.




Notary Public in and for the State
of Washington, residing in Post Falls.
My appointment expires 5/3/17.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 19 day of August, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

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Layman, Layman & Robinson, PLLP
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AFFIDAVIT OF ELIZABETH A. TELLESSEN - 5

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Young Revocable Trust

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ELIZABETH A. TELLESEN

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AFFIDAVIT OF ELIZABETH A. TELLESEN - 6

Winston & Cashatt
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Phone: (208) 667-2103

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI

**Certified
Transcript**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

) No. CV 09-2619

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company,
LAKE VIEW AG, a Liechtenstein
company, BRN-LAKE VIEW JOINT VENTURE,
an Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the

RULE 30(b)(6) DEPOSITION OF ACI NORTHWEST, INC.

TESTIMONY OF WILLIAM CHARLES RADOBENKO

TAKEN ON BEHALF OF THE PLAINTIFF

AT 6600 NORTH GOVERNMENT WAY, DALTON GARDENS, IDAHO

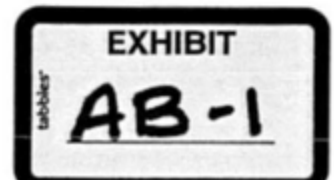
MARCH 8, 2011, 2:29 P.M.

REPORTED BY:

VALERIE J. LEGG, CSR

Notary Public

Job No. CS317221



1 RYKER YOUNG REVOCABLE TRUST, MARSHALL)
CHESROWN, a single man, IDAHO ROOFING)
2 SPECIALIST, LLC, an Idaho limited)
liability company, THORCO, INC., an)
3 Idaho corporation, CONSOLIDATED)
SUPPLY COMPANY, an Oregon corporation,)
4 INTERSTATE CONCRETE & ASPHALT COMPANY,)
an Idaho corporation, CONCRETE)
5 FINISHING, INC., an Arizona)
corporation, THE TURF CORPORATION, an)
6 Idaho corporation, WADSWORTH GOLF)
CONSTRUCTION COMPANY OF THE SOUTHWEST,)
7 a Delaware corporation, POLIN & YOUNG)
CONSTRUCTION, INC., an Idaho)
8 corporation, TAYLOR ENGINEERING, INC.,)
a Washington corporation, PRECISION)
9 IRRIGATION, INC., an Arizona)
corporation and SPOKANE WILBERT VAULT)
10 CO., a Washington corporation, d/b/a)
WILBERT PRECAST,)

11)
Defendants.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 of the cost incentive?

2 A. I don't think that Marshall ever told me it
3 wasn't owed. I think that the time that we discussed
4 it, you know, this is sometime after the market crash
5 in '08. Things were going to hell in a hand basket,
6 and he was having lots of trouble on a lot of
7 projects, and I don't think that the conversation
8 went any further than that. Just -- everything just
9 got worse.

10 Q. Why didn't you -- you said that that
11 conversation was in the latter part of 2008, correct?

12 A. Yes.

13 Q. How come you've never invoiced BRN for that
14 cost savings component?

15 A. Didn't seem -- it didn't -- wasn't
16 necessary.

17 Q. Why?

18 A. Because he couldn't pay the other part of
19 the bill.

20 Q. Any other reason?

21 A. No.

22 Q. Were you --

23 A. I guess there was another reason. I didn't
24 really want to argue with him about it, so if I sent
25 him an invoice then maybe we would argue about it.

1 But if I didn't send him the invoice, we wouldn't
2 argue about it.

3 Q. Was ACI still doing work on any component of
4 Black Rock North at the end of 2008?

5 A. Yeah, I believe so.

6 Q. You didn't tell people to stop work on the
7 Black Rock project after you had this conversation
8 with Marshall Chesrown?

9 A. No.

10 Q. How come?

11 A. Why would I? I wouldn't have any reason to
12 tell him to stop work.

13 Q. Because your bills weren't getting paid.

14 A. I think that the -- the period of time when
15 the bills were getting paid, and then there was a
16 period of time when they weren't getting paid, then
17 they were getting paid, then they weren't getting
18 paid. It wasn't consistently, you're not getting
19 paid after this date. It was, okay, we got some
20 money, and then we continued to do some work. And
21 then we didn't get any money, so we didn't do any
22 work. And then he got us some more money, so we went
23 back to work.

24 Q. I understand. But I thought you were
25 telling me earlier that you didn't invoice BRN for

1 Q. And just so I understand you, Mr. Radobenko,
2 are you telling me that you're having this discussion
3 with Marshall Chesrown roughly October of 2006?
4 Correct?

5 A. That's correct.

6 Q. And he's telling you he hasn't lined up
7 financing for the project yet?

8 A. I think I had some conversations about --
9 with Marshall about when we're going to start the job
10 and he was waiting for the finishing. And maybe this
11 was September through November, in that period of
12 time, and some of the conversations were, I think I
13 got the financing lined up. And then the
14 conversations became, I've got the 50 million bucks
15 lined up, and I'm ready to go --

16 Q. Okay.

17 A. -- and so we proceeded in late fall, I
18 believe, to start in earnest on the project after he
19 said he had the 50 million lined up.

20 Q. When did he tell you he had the 50 million
21 lined up?

22 A. In the fall of 2006.

23 Q. When? Can you peg it to a certain date or
24 certain holiday or anything like that?

25 A. I think that I'd have to look back at when I

1 interest?

2 A. No.

3 Q. You told him maybe?

4 A. I told him I had some interest.

5 Q. Okay. And when did you tell him --
6 eventually you told him you weren't interested, I
7 take it?

8 A. No. He told me he wasn't interested anymore
9 because he got his financing lined up.

10 Q. Okay. But there was a period of time when
11 he was out looking for financing, and he was having a
12 discussion with you about being one of the potential
13 investors.

14 A. That was over about a 12-month period. It
15 might have been 18 months.

16 Q. Okay. But that was discussed?

17 A. Yes.

18 Q. And in the period of time when Mr. Chesrown
19 was hesitant about whether to get financing of the
20 project, ACI was just doing small components on the
21 project?

22 A. That's -- that's how I recall it, yes.

23 Q. Then ACI didn't start performing the full
24 scope of its work under 803 until Mr. Chesrown had
25 told you that he had, at least in his mind, secured

1 the financing. Is that an accurate statement?

2 A. I think that's fair.

3 Q. That would have been roughly January of
4 2007?

5 A. No. That would have been October, November
6 of 2006.

7 Q. Okay. But you do agree with me that the
8 reason that the contract that's marked as Exhibit 803
9 is dated effective January 5, 2007, is because that's
10 the time frame when you had heard that ACI had -- I'm
11 sorry, not ACI, but BRN had secured its financing?

12 A. I'm not sure that the reason that it's dated
13 the date that it's dated has any reason. That's the
14 date they signed it. I don't know why it's dated
15 that date. We were already working on the job.

16 Q. Did you ever have any discussion with anyone
17 from American Bank about financing for this project?

18 A. No.

19 Q. Did Mr. Chesrown ever tell you about his
20 discussions with anyone at American Bank about the
21 financing for this project?

22 A. Yes.

23 Q. What did he tell you?

24 A. He told me that he had lined up the
25 \$50 million and that they were going to fund the

1 project.

2 Q. Did Mr. Chesrown tell you that he had lined
3 up the \$50 million from American Bank?

4 A. Yes.

5 Q. All 50 million?

6 A. Yes.

7 Q. Did he tell you that he had loan documents
8 signed?

9 A. No.

10 Q. Did you ever ask to see the loan documents?

11 A. No.

12 Q. Why not?

13 A. I wouldn't have any reason to.

14 Q. Why wouldn't you have any reason to?

15 A. Because he told me he had the money.

16 Q. You just took him for his word?

17 A. Sure.

18 Q. Did he ever tell you what the terms and
19 conditions were of the loan with American Bank?

20 A. No.

21 Q. Did he tell that you American Bank was
22 loaning him the \$50 million unconditionally?

23 A. No.

24 Q. Did you think there were going to be certain
25 conditions?

1 A. I didn't think about it at all.

2 Q. Okay. Did it concern you at all?

3 A. No. Marshall said he had the money. That
4 was the end of my concern.

5 MR. LAYMAN: Maybe I'll take a two-minute
6 rest room break.

7 MR. WETZEL: Sure.

8 MR. GILL: Sure.

9 (Whereupon, a recess was taken.)

10 MR. GILL: Let's go back on the record.

11 BY MR. GILL:

12 Q. Mr. Chesrown --

13 MR. WETZEL: No, Mr. Radobenko.

14 MR. GILL: Oh, yeah. Radobenko. Sorry.

15 BY MR. GILL:

16 Q. Mr. Radobenko -- start over again -- when we
17 left off we were talking about your conversations
18 with Marshall Chesrown about the financing for the
19 Black Rock North project. Did you ever do any
20 investigation yourself to see whether BRN had
21 actually lined up \$50 million?

22 A. No.

23 Q. Did you ever talk to anybody other than
24 Marshall Chesrown to see if the \$50 million was lined
25 up?

1 A. I don't believe so.

2 Q. You told me about the first Black Rock
3 project, the other 18-hole project. You had a
4 similar situation where you had started work and he
5 was -- "he" being Marshall Chesrown and the others
6 were trying to round up the money to finance that
7 project as well?

8 A. No. I think what I said is that we were on
9 the job and we weren't able to start.

10 Q. Okay. You didn't get your notice to proceed
11 that you wanted.

12 A. I didn't get the start for six months, I
13 think is what I said, after I put the equipment on
14 the job site.

15 Q. Okay. Have you -- take a look at
16 Exhibit 801 if you would, please.

17 If you'll refer to paragraph -- well, let's
18 go to page -- pages 12, 13 -- pages 12 and 13. Have
19 you seen paragraphs 29 through 36 of this document
20 before I've handed it to you today?

21 A. Probably.

22 Q. Do you recall reviewing this before it was
23 filed with the court?

24 A. Yes.

25 I'm not sure which draft this is --

1 promised was enough to complete the construction and
2 assure that ACI was paid in full."

3 Do you have knowledge of that statement,
4 personal knowledge of that statement?

5 A. Yes.

6 Q. What is your personal knowledge?

7 A. Well, if they were going to lend 50 million,
8 that was certainly enough to pay our \$7 million
9 contract.

10 Q. Is that -- American Bank never told you they
11 were lending 50 million, correct?

12 A. No.

13 Q. That is a statement made by Mr. Chesrown to
14 you.

15 A. Yes.

16 Q. And did he say those words, that American
17 Bank has agreed to lend \$50 million?

18 A. I don't recall the exact words that he said.

19 Q. Is that the gist of it though?

20 A. The gist is that they were going to lend
21 \$50 million.

22 Q. And what I'm trying to figure out,
23 Mr. Radobenko, is whether Marshall Chesrown is
24 telling you that he has a collective group of
25 investors that are willing to put in 50 million, or

1 was he tell you that American Bank has agreed to put
2 in 50 million?

3 A. No. He told me his bank was. He told me
4 American Bank.

5 Q. Did you at some time gain the understanding
6 that American Bank only agreed to lend 15 million on
7 this project?

8 A. I think that I believe that there was -- I'm
9 not sure that I ever knew what the number was.
10 15 million, no.

11 Q. I'm sorry?

12 A. I'm not -- I don't believe I ever knew that
13 there was a number of \$15 million.

14 Q. Okay. But the only one that had ever told
15 you that -- made a statement that American Bank had
16 agreed to lend 50 million was Marshall Chesrown?

17 A. I believe that's the case.

18 Q. Nobody else made that statement?

19 A. I don't believe so.

20 Q. Did you understand that there would be loan
21 documents prepared and signed?

22 A. I assumed that, but I -- when you borrow
23 money, normally there's loan documents, but I
24 wouldn't --

25 Q. Sure.

1 Q. Okay. And what happens when there isn't any
2 financing or money for payment?

3 A. Generally, we don't start the job unless we
4 see that there is going to be financing.

5 Q. At the time that Marshall Chesrown was
6 bringing this job around, would you have done the
7 work for Marshall Chesrown just based upon Marshall's
8 statement that he was going to pay for the job?

9 A. Yes.

10 Q. Oh, you would have?

11 A. Sure.

12 Q. Why?

13 A. Because he's always paid us in the past.

14 Q. Okay.

15 A. I might have asked him where is he going to
16 get the money, but if Marshall said he was going to
17 pay, I wouldn't have worried about it.

18 Q. So did you ask that, how he was going to pay
19 for this job?

20 A. I think that -- not necessarily did I ask
21 the question, but it came up in the conversation that
22 it was going to be financed by America Bank.

23 MR. WETZEL: Okay. No further questions.

24 MR. GILL: Mr. Radobenko, do I understand
25 your testimony correctly that ACI began work on this

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

3 AMERICAN BANK, a Montana banking)
4 corporation,) Case No. CV-09-2619
5 Plaintiff,)

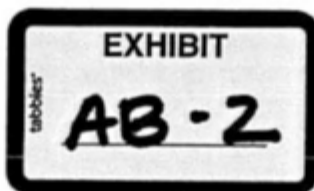
6 vs.)

7 BRN DEVELOPMENT, INC., an Idaho)
8 corporation, BRN INVESTMENTS,)
9 LLC, an Idaho limited liability)
10 company, LAKE VIEW AG, a)
11 Liechtenstein company, BRN-LAKE) DEPOSITION OF
VIEW JOINT VENTURE, an Idaho) WILLIAM RADOBENKO
12 general partnership, ROBERT)
13 LEVIN, Trustee for the ROLAND M.) TAKEN ON BEHALF OF
14 CASATI FAMILY TRUST, dated) THE PLAINTIFF
June 5, 2008, RYKER YOUNG,)
15 Trustee for the RYKER YOUNG)
16 REVOCABLE TRUST, MARSHALL) AT
17 CHESROWN, a single man, IDAHO) COEUR D'ALENE, IDAHO
18 ROOFING SPECIALIST, LLC, an)
19 Idaho limited liability company,) AUGUST 15, 2011
20 THORCO, INC., an Idaho) AT 9:00 A.M.

21 corporation, CONSOLIDATED SUPPLY)
22 COMPANY, an Oregon corporation,)
23 INTERSTATE CONCRETE & ASPHALT)
24 COMPANY, an Idaho corporation,)
25 CONCRETE FINISHING, INC., an)
Arizona corporation, WADSWORTH)
GOLF CONSTRUCTION COMPANY OF THE)

REPORTED BY:

PATRICIA L. PULLO, CSR
Notary Public



1 SOUTHWEST, a Delaware)
corporation, THE TURF)
2 CORPORATION, an Idaho)
corporation, POLIN & YOUNG)
3 CONSTRUCTION, INC., an Idaho)
corporation, TAYLOR ENGINEERING)
4 INC., a Washington corporation,)
PRECISION IRRIGATION, INC., an)
5 Arizona corporation and SPOKANE)
WILBERT VAULT CO., a Washington)
6 corporation d/b/a WILBERT)
PRECAST,)
7)
Defendants,)
8)
And)
9)
TAYLOR ENGINEERING, INC., a)
10 Washington corporation,)
11 Third-Party Plaintiff,)
12 vs.)
13 ACI NORTHWEST, INC., an Idaho)
corporation; STRATA, INC., an)
14 Idaho corporation; and SUNDANCE)
INVESTMENTS, LLP, a limited)
15 liability partnership,)
16 Third-Party Defendants,)
17 And)
18 ACI NORTHWEST, INC., an Idaho)
Corporation,)
19)
Cross-Claimant,)
20 vs.)
21)
AMERICAN BANK, a Montana banking)
22 corporation, BRN DEVELOPMENT,)
23)
24)
25)

1 INC., an Idaho corporation, BRN)
INVESTMENTS, LLC, an Idaho)
2 limited liability company, LAKE)
VIEW AG, a Liechtenstein)
3 company, BRN-LAKE VIEW JOINT)
VENTURE, an Idaho general)
4 partnership, ROBERT LEVIN,)
Trustee for the ROLAND M. CASATI)
5 FAMILY TRUST, dated June 5,)
2008, RYKER YOUNG, Trustee for)
6 the RYKER YOUNG REVOCABLE TRUST,)
MARSHALL CHESROWN, a single man,)
7 THORCO, INC., an Idaho)
corporation, CONSOLIDATED SUPPLY)
8 COMPANY, an Oregon corporation,)
THE TURF CORPORATION, WADSWORTH)
9 GOLF CONSTRUCTION COMPANY OF THE)
SOUTHWEST, a Delaware)
10 corporation, THE TURF)
CORPORATION, POLIN & YOUNG)
11 CONSTRUCTION, INC., an Idaho)
corporation, TAYLOR ENGINEERING)
12 INC., a Washington corporation,)
and PRECISION IRRIGATION, INC.,)
13 an Arizona corporation,)
)

14 Cross-Claim Defendants.)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 A. Yes.

2 Q. If you don't understand my question, will you
3 stop me and ask me to restate it so that you understand
4 it and give an appropriate answer?

5 A. Yes.

6 Q. Thank you.

7 Have you done anything to prepare yourself
8 for this deposition?

9 A. Yes.

10 Q. What did you do?

11 A. Spoke with my lawyer -- or spoke with Steve
12 Wetzel, ACI's lawyer.

13 MR. WETZEL: Also your lawyer as well.

14 BY MS. TELLESSEN:

15 Q. And did you review the deposition that you
16 gave on behalf of ACI previously in this matter?

17 A. No.

18 Q. Have you read that at any time prior to this
19 deposition?

20 A. I believe I did read it, yes.

21 Q. Did you make any changes or corrections to
22 that deposition?

23 A. I don't believe so.

24 Q. To help me understand -- the contracting
25 party initially on Black Rock North was Apex

1 Construction. Can you describe for me how that changed
2 into ACI Northwest, or if it did.

3 A. It was a name change from Apex to ACI
4 Northwest.

5 Q. So there wasn't any other entity formalities
6 that were changed, just simply a change in the name?

7 A. That's correct.

8 Q. What's your percent ownership of ACI?

9 A. 98 or 99 percent.

10 Q. And what's your title?

11 A. President.

12 Q. How long have you held that position?

13 A. I believe since early 2009.

14 Q. As the president of ACI, are you responsible
15 for directing the litigation in this matter?

16 A. Yes.

17 Q. There have been -- I'm going to classify
18 three types of claims asserted by ACI in the
19 litigation. The breach of contract claim against BRN
20 Development; the lien claims; and what are now
21 essentially equitable claims directly against American
22 Bank. Do you understand those distinctions?

23 MR. WETZEL: Objection. Go ahead.

24 BY MS. TELLESSEN:

25 Q. You can answer.

1 A. The Club at Black Rock.

2 Q. And did you ask for, at that time, any
3 evidence of his -- or the business's ability to pay you
4 for the work that they were contracting you for?

5 A. I don't recall.

6 Q. Would it be your practice to confirm that the
7 person you're contracting with has the ability to pay
8 you?

9 A. Generally speaking, yes.

10 Q. And how do you go about doing that?

11 A. Normally you call his banker.

12 Q. And have you done --

13 A. Or the project -- whoever is financing the
14 project.

15 Q. And what sort of information do you obtain
16 from them?

17 A. If the project has bank financing.

18 Q. And the amount of financing?

19 A. Not generally. If we have a contract for --
20 to do the infrastructure that we have enough funds
21 available to pay for the infrastructure.

22 Q. Did you do that in this case, the case of
23 Black Rock North?

24 A. Probably.

25 Q. Who would you have called?

1 A. Probably Washington Trust.

2 Q. Why Washington Trust?

3 A. Because I think that's what his banker was.

4 Q. For Black Rock North?

5 A. I believe so.

6 Q. When did you become aware that Washington
7 Trust was not going to lend money to Black Rock North?

8 A. Well, maybe we should back up. I was talking
9 about the Club at Black Rock.

10 Q. Okay.

11 A. And I believe the Club at Black Rock
12 Washington Trust had an interest in.

13 Q. Okay. So if your memory serves correctly --
14 and I'm just wanting to make sure I understand what
15 you're telling me -- in 2001 on one of your first
16 projects with Marshall, you called Washington Trust to
17 make sure that he did in fact have money available to
18 pay you?

19 A. I would have called them as a reference.

20 Q. Okay.

21 A. I think. I believe I said probably.

22 Q. That's fine.

23 A. That was ten years ago.

24 Q. That's fine. I appreciate that.

25 That's a practice that you had in the past,

1 and it would be a probability that you did that in
2 2001, but you don't have a specific recollection?

3 A. That's correct.

4 Q. Okay. I'm sorry. If I asked this already,
5 forgive me. In the case of Black Rock North, did you
6 exercise that same practice of calling the lender as a
7 reference?

8 A. No.

9 Q. Why not?

10 A. Because of the long relationship with
11 Marshall Chesrown and, I believe at the time, Bob
12 Samuels.

13 Q. Okay.

14 A. And I believe also because Marshall told me
15 that he had the commitment for the money to build it.

16 Q. And did you ever ask to see any of that in
17 writing?

18 A. There wouldn't be a reason to ask. So the
19 answer is no.

20 Q. Because you trusted Marshall?

21 A. We've done a lot of business -- we had done a
22 lot of business together. We didn't have any
23 difficulty getting paid. So I really didn't need a
24 reference for Marshall Chesrown and Bob Samuels at that
25 juncture.

1 A. When they were initially putting the
2 financing together, they asked us for our -- they asked
3 us through Marshall for our experience portfolio and a
4 copy of the contract. And that was supplied to the
5 bank through Marshall.

6 Q. And your testimony is you never read any of
7 the loan documents between BRN Development and American
8 Bank?

9 MR. WETZEL: Objection.

10 THE WITNESS: Ever? Is that a question?

11 BY MS. TELLESSEN:

12 Q. Have you ever read the loan documents between
13 BRN Development and American Bank?

14 A. Yes.

15 Q. And when did you do that?

16 A. Within the last six months, maybe a year.

17 Q. Do you recall seeing in those documents the
18 obligation to pay contractors?

19 A. I recall seeing the obligation for the funds
20 to be used to pay the contractors.

21 Q. And the portion -- you're thinking, I think,
22 of the same area I am, where the borrower in fact
23 covenants that the borrower is going to pay the
24 contractors, and not the lender. Do you remember that
25 part?

1 MR. WETZEL: Objection.

2 THE WITNESS: Not specifically.

3 BY MS. TELLESSEN:

4 Q. Okay. But you didn't read that prior to the
5 loan being made in February 2007?

6 A. No.

7 Q. And you didn't read it while you were
8 actively working on Black Rock North?

9 A. No.

10 Q. Anytime prior to this litigation did American
11 Bank directly to you tell you that they were going to
12 pay you for work you were doing on Black Rock North?

13 A. I don't believe I ever spoke with anyone from
14 American Bank to this day except for the
15 representations from Marshall that may -- that were
16 made by American Bank according to Marshall.

17 MS. TELLESSEN: I'm sorry. Did you still
18 want to take a break?

19 THE WITNESS: Yeah.

20 MS. TELLESSEN: Okay. Thank you.

21 (A short break was taken.)

22 BY MS. TELLESSEN:

23 Q. I just want to make sure we left off and get
24 the piece kind of done. You never talked to anybody at
25 American Bank --

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking)
corporation,)

Plaintiff,)

vs.)

BRN DEVELOPMENT, INC., an Idaho)
corporation, BRN INVESTMENTS,)
LLC, an Idaho limited liability)
company, LAKE VIEW AG, a)
Liechtenstein company, BRN-LAKE)
VIEW JOINT VENTURE, an Idaho)
general partnership, ROBERT)
LEVIN, Trustee for the ROLAND M.)
CASATI FAMILY TRUST, dated)
June 5, 2008, RYKER YOUNG,)
Trustee for the RYKER YOUNG)
REVOCABLE TRUST, MARSHALL)
CHESROWN, a single man, IDAHO)
ROOFING SPECIALIST, LLC, an)
Idaho limited liability company,)
THORCO, INC., an Idaho)
corporation, CONSOLIDATED SUPPLY)
COMPANY, an Oregon corporation,)
INTERSTATE CONCRETE & ASPHALT)
COMPANY, an Idaho corporation,)
CONCRETE FINISHING, INC., an)
Arizona corporation, THE TURF)
CORPORATION, an Idaho)

Case No. CV 09-2619

COPY

RULE 30(b)(6)
DEPOSITION OF
BRN DEVELOPMENT, INC

TESTIMONY OF
MARSHALL CHESROWN

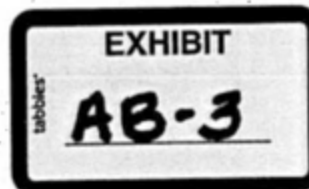
TAKEN ON BEHALF OF
THE PLAINTIFF

AT
SPOKANE, WASHINGTON

JUNE 23, 2010
AT 9:08 A.M.

REPORTED BY:

PATRICIA L. PULLO, CSR
Notary Public



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1 corporation, WADSWORTH GOLF)
 2 CONSTRUCTION COMPANY OF THE)
 3 SOUTHWEST, a Delaware)
 4 corporation, POLIN & YOUNG)
 5 CONSTRUCTION, INC., an Idaho)
 6 corporation, TAYLOR ENGINEERING)
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 9 Arizona corporation and SPOKANE)
 10 WILBERT VAULT CO., a Washington)
 11 corporation d/b/a WILBERT)
 12 PRECAST,)
 13)
 14 Defendants.)
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 25)



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1 each of the contractors and subcontractors?
 2 A. Most, yeah. Some are time and materials.
 3 But typically they're contract.
 4 Q. Is BRN Development still an active business?
 5 A. Yes.
 6 Q. BRN Development purchased the property known
 7 as Black Rock North from an entity called BRN
 8 Investments; is that correct?
 9 A. Correct.
 10 Q. And the purchase price was about \$30 million?
 11 A. Yes.
 12 Q. Then subsequent to that they obtained another
 13 loan -- or a loan from American Bank to develop the
 14 property?
 15 A. Correct.
 16 I think we determined that it's not a loan;
 17 it's loans.
 18 Q. From American Bank?
 19 A. Yes.
 20 Q. I think we did. And I can pull that out.
 21 A. It was the one we referred to as the bridge
 22 loan and then next ...
 23 Q. But the American Bank loan for 15 million is
 24 the only other loan --
 25 A. Yes.

1 Q. -- recorded against the property right now as
 2 far as American Bank is concerned?
 3 A. Yes, to my knowledge.
 4 Q. That loan is secured by the mortgage that's
 5 been marked as Exhibit 166; is that correct?
 6 A. Yes.
 7 Q. And on page 14 of that agreement ...
 8 A. On page 14, you said?
 9 Q. Yes, sir.
 10 A. All right.
 11 Q. Is that your signature on that page?
 12 A. Yes, it is.
 13 Q. And you've signed on behalf of BRN
 14 Development as its president?
 15 A. Yes.
 16 Q. And by your signature, did you intend to bind
 17 BRN Development to the terms of this mortgage?
 18 A. Yes.
 19 MR. LAYMAN: Elizabeth, just for the -- I'll
 20 interrupt for cleaning -- housekeeping. When the court
 21 reporter goes through the record, if we could ask her
 22 to maybe put the Bates stamp number next to the exhibit
 23 number. That would help us when we all go back and
 24 make reference to it.
 25 (Discussion off the record.)

1 BY MS. TELLESSEN:
 2 Q. In the Recitals on page 1 of Exhibit 166, it
 3 references the revolving credit agreement and the
 4 revolving credit note. Do you see that?
 5 A. Yes.
 6 Q. And those two agreements were marked as
 7 exhibits yesterday as Exhibits 164 and 165.
 8 A. Yes.
 9 Q. And looking at Exhibit 165, the revolving
 10 credit note, is that your signature on the third page?
 11 A. Yes.
 12 Q. AB002411, it says --
 13 A. Yes.
 14 Q. -- the Bates number?
 15 And you signed as president on behalf of BRN
 16 Development, Inc.?
 17 A. Yes.
 18 Q. And by signing this agreement, did you intend
 19 to bind BRN Development?
 20 A. Yes.
 21 Q. Turning to Exhibit 164, the revolving credit
 22 agreement, on page 24 of that agreement, what's the
 23 Bates number in the bottom right-hand corner?
 24 A. AB002469.
 25 Q. And your signature appears on that page?

1 A. Yes.
 2 Q. And you signed on behalf of BRN Development
 3 as its president?
 4 A. Yes.
 5 Q. And by signing this agreement, you intended
 6 to bind BRN Development to the terms of this agreement?
 7 A. Yes.
 8 Q. In our discussions yesterday, you mentioned
 9 that there were negotiations and discussions
 10 preceding -- or that took place prior to the signing of
 11 the revolving credit agreement, revolving note and
 12 mortgage. Do you recall that?
 13 A. Yes.
 14 Q. And were those agreements generally -- or
 15 discussions generally made in the form of term sheets
 16 or preliminary commitments?
 17 A. Not necessarily.
 18 Q. How would you describe the precursors to this
 19 loan agreement?
 20 A. Well, there were several conversations and
 21 meetings. The relationship of how we got to American
 22 Bank -- and I can't speak to other than -- the little
 23 bit I know is that the relationship really started with
 24 my partner, who's Robert Samuel, who had a relationship
 25 with Bruce Erickson, who was the owner of the bank, it

1 So maybe we should just take a second and read them
2 off.

3 MS. TELLESSEN: I will.

4 BY MS. TELLESSEN:

5 Q. If you'll follow along, please, Mr. Chesrown,
6 in Exhibit 175 the pages are numbered in the bottom
7 right-hand corner with a Bates number. We're going to
8 go through those to make sure our copies match. We
9 have AB003219, followed by AB003202, 3201, 3203, 3216,
10 3217, 3218, 3212, 3213, 3214, 3215, 3208, 3209, 3210,
11 3211, 3204, 3205, 3206, 3207, 4684, 4685, 4686, 4687,
12 4688, 4689, 4690 and 4691.

13 Do we have all the same pages?

14 A. Yes.

15 Q. Okay. And you mentioned you don't
16 particularly recognize these documents. Do you have
17 any knowledge of their purpose?

18 A. Yeah. They're obviously draw requests from
19 BRN to American Bank for various -- various draws that
20 were placed by our CFO, Chad Rountree, on behalf of BRN
21 to, it looks like, a couple of different people at
22 American Bank with draft wiring instructions, amounts,
23 what the use of some of them are, et cetera.

24 Q. Okay. If you look at page AB003201 -- it's
25 about the third page -- it references in that

1 requests before they went out?

2 A. Not to my knowledge.

3 Q. Did you instruct Mr. Rountree when to make a
4 request?

5 A. No. It would be probably in his normal
6 course of business. Because at the time we had several
7 projects going on, so ...

8 Q. So did he have the authority to request and
9 apply funds as needed?

10 A. Yeah.

11 Q. By way of example, if you would turn to the
12 draw request dated March 9th, 2007; AB003216.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. I don't recognize it. I see what it is.

16 Q. I'm on 3216.

17 A. Oh, 3216. There we go.

18 I don't recognize the document. But it's
19 basically the same thing as the others, just a
20 different format, it looks like, for requesting draws,
21 right.

22 Q. It seems. That's why I'm asking you.

23 A. Oh, I don't know. I mean, that's what it
24 looks like. It just looks like another draw request.

25 Q. Do you know who would have drafted this form?

1 disbursement request the payment of existing debt. Do
2 you see that?

3 A. Yes.

4 Q. To your knowledge, is that the payment of the
5 bridge loan that you've been referring to?

6 A. I wouldn't know. I would assume so. Because
7 I would believe that was -- the only debt being paid
8 was back to American Bank but -- that's what it looks
9 like.

10 Q. And if you would glance at Exhibit 170.

11 MR. LAYMAN: 170?

12 MS. TELLESSEN: Yes.

13 MR. LAYMAN: Thanks.

14 BY MS. TELLESSEN:

15 Q. (Continuing.) -- the second page, AB003108,
16 it has at the top a number of payments with the initial
17 disbursement of \$7,000,650 (sic).

18 A. \$50,000.

19 Q. 50,000. I'm sorry.

20 A. They're close.

21 Q. And it references the payment of two American
22 Bank loans to the tune of about 5,150,000?

23 A. Right. So there was probably some additional
24 interest in between or something.

25 Q. And did you ever review these disbursement

1 A. It looks like the bank would have drafted it,
2 because it has some "On behalf of Borrower" language on
3 the bottom. That wouldn't be something we would
4 typically put on draw requests we were doing unless we
5 were requested to.

6 Q. And did you ever review this form in blank or
7 in reference to a particular request?

8 A. I don't remember. I don't recall.

9 Q. To your knowledge, was the entire amount of
10 the American Bank loan, the \$15 million, disbursed at
11 one point?

12 A. Yes.

13 Q. And then a payment was made in order to
14 release American Bank's lien against the four lots that
15 were sold to you?

16 A. Correct.

17 Q. After that payment was made, was any other
18 disbursement request made?

19 MR. LAYMAN: The \$400,000 payment?

20 MS. TELLESSEN: (Nodding.)

21 THE WITNESS: Don't remember.

22 BY MS. TELLESSEN:

23 Q. Would you have instructed Mr. Rountree to
24 request those funds if they were necessary?

25 A. I doubt it. I don't think they were

1 Q. In the second e-mail that appears on that
2 page, November 8th at 4:03 p.m. --

3 A. Yes.

4 Q. -- you state that, "When would you think the
5 commitment subject to appraisal would be solidified?"
6 Do you see that?

7 A. Yes.

8 Q. Did BRN Development know at this time that
9 American Bank's loan would be subject to the value of
10 an appraisal?

11 A. They always are.

12 Q. And this case was no different?

13 A. Right.

14 MR. LAYMAN: Liz, would it be convenient for
15 you if we take a rest room break?

16 (A short break was taken.)

17 (Whereupon, Deposition Exhibit No. 179 was
18 marked for identification.)

19 BY MS. TELLESSEN:

20 Q. Take a moment to review Exhibit 179, please.
21 It's Bates No. AB000782 through 784.

22 A. (Complying.) Okay.

23 MR. CAMPBELL: Hey, Liz, I don't have those
24 documents in the production that you gave to me.

25 (Discussion off the record.)

1 BY MS. TELLESSEN:

2 Q. Mr. Chesrown, are you familiar with this
3 e-mail communication?

4 A. I don't remember it. But it appears to be
5 e-mails between myself and Mark Hendrickson primarily.

6 Q. And if you look at the first -- or oldest
7 e-mail, which is on the last -- begins on the second to
8 last page, would you, if you can, describe to me now
9 what your purpose in these statements were. I don't
10 want to assume what you were talking about.

11 MR. ANSON: Which e-mail are you referring
12 to, the one at the bottom of page 783?

13 MS. TELLESSEN: Yes, sir.

14 MR. ANSON: Okay.

15 THE WITNESS: Well, the first -- or the
16 second sentence mentioned "That will show a
17 \$40-million-plus asset," which is referring to the
18 appraisal for the raw land that we had. "With a
19 matching liability which will be subordinated to" -- so
20 we were -- we were saying that that was going to be
21 subordinated to the first position.

22 And it says something about 52 lots. I don't
23 remember what that conversation was about. "Reduce the
24 total needed to about 40 million." So we were saying
25 what we were going to subordinate the 40 --

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1 approximately \$40 million asset, which is the \$30
2 million BRNI loan, in exchange for -- and I'm saying
3 here that we -- at this point we'd reduce the total
4 needed to about 40 million.

5 "As we have previously talked about, we don't
6 anticipating needing" -- the entire commitment -- "but
7 that will depend on the date." "We could probably get
8 by with \$35 million total but we were trying to be
9 cautious. That would give us about 15 million in
10 front" -- which is the initial loan -- "and 20 million
11 for construction." And he was -- had already
12 referenced that 65 percent loan to value was going to
13 be their requirement, it appears here.

14 And I think -- I think what generated this
15 was a conversation of how he was doing with the
16 participating lenders, because, again, I think we -- as
17 I remember, I think Sam and Bruce originally came up
18 with the \$50 million number, and then when Mark was
19 trying to get the participating banks, I think at this
20 point he'd had participation. Now, they -- I don't
21 think at this point they had toured the property or
22 anything, right -- oh, no. That's what they were
23 talking about, scheduling them to come out.

24 So we're kind of getting our arms around
25 what -- you know, what the participants they had so far

1 could potentially, you know, participate with. So I --
2 I think this was a conversation that Mark and I had on
3 the phone and said they kind of had about \$40 million
4 rounded up in participation.

5 BY MS. TELLESSEN:

6 Q. Okay. And if you'll help me -- it looks like
7 the second to last sentence. It starts with "That
8 would give us" and proceeds on.

9 A. Yes.

10 Q. And there's a statement in here, it "still
11 works assuming the appraisal increases in value."

12 A. Correct.

13 Q. Is that referencing the appraisal that would
14 come subsequent to accomplish another or different loan
15 from American Bank?

16 A. No. I think we were talking about whether
17 the -- because they were having an appraisal done at
18 this time. The \$40 million appraisal was our
19 appraisal. Obviously banks don't rely on the
20 borrower's appraisal typically. So they had ordered an
21 appraisal. And we didn't know what that appraisal was
22 yet. So we knew all along regardless of whether it was
23 the 15 million -- whatever numbers we were talking
24 about, it was always going to have to be supported to a
25 65 percent loan to value on appraisal.

1 they couldn't, I think the document says that they have
2 a right to. I don't know if they legally have a right
3 to.

4 Q. And to your knowledge is there any basis or
5 representation by American Bank that they would not
6 enforce that right?

7 A. No.

8 Q. You stated previously that American Bank
9 represented that it was going to loan up to \$50 million
10 to BRN Development for the development of Black Rock
11 North. Is that a fair statement?

12 A. Yes.

13 Q. And you also stated that those additional
14 loans over the \$15 million would be contingent upon an
15 appraisal that had a value which justified a 65-percent
16 loan-to-value ratio; is that --

17 A. Correct.

18 Q. -- a fair statement?

19 And in this case, an appraisal was never
20 obtained or received by the bank that would have
21 justified a loan of more than \$15 million; is that a
22 fair statement?

23 A. Not that I'm aware of.

24 Q. And it would be fair to say that the bank's
25 hands were tied unless they had such an appraisal?

1 (Record read as requested.)

2 THE WITNESS: Yes.

3 BY MS. TELLESSEN:

4 Q. Are you aware of any other statements or
5 representations by American Bank that were false or
6 misleading to BRN Development?

7 MR. LAYMAN: Object to the form of the
8 question. If you learned anything through your legal
9 counsel, I'd instruct you not to answer based on it's
10 privileged.

11 THE WITNESS: I don't know. And as we've
12 stated, I don't think we've had all the discovery to,
13 you know, be able to give you a correct answer.

14 BY MS. TELLESSEN:

15 Q. But at this time are you aware of anything?

16 A. No.

17 Q. When BRN Development learned that the loan
18 amount would be \$15 million, did you seek financing
19 elsewhere, at the time February 2007/December 2006 time
20 range?

21 A. I don't know around that exact time. We had
22 investigated several different opportunities with
23 private equity firms and other banks, et cetera. But I
24 don't know if it was post or pre that -- that
25 commitment. But after the loan was made, I don't

1 MR. LAYMAN: Object to the form of the
2 question, speculation and it's a legal conclusion as to
3 what rights and abilities the bank had.

4 BY MS. TELLESSEN:

5 Q. You can answer.

6 A. I don't know what the bank could or couldn't
7 do.

8 Q. But your understanding and the understanding
9 of BRN Development was that additional monies would not
10 be lent unless there was an appraisal that justified an
11 additional loan?

12 A. Correct.

13 Q. And to your knowledge no such appraisal was
14 ever obtained or --

15 MR. LAYMAN: This has been asked and answered
16 about five times. Answer it again.

17 THE WITNESS: I don't -- I mean, we've
18 discussed the appraisals 15 times today.

19 BY MS. TELLESSEN:

20 Q. A yes or no is sufficient.

21 MR. LAYMAN: No. He can answer the question
22 how he feels most appropriate. Go ahead and answer it.

23 THE WITNESS: What is the question again?

24 MS. TELLESSEN: Would you read it back,
25 please.

1 believe so.

2 Q. What about when you learned the loan amount
3 was going to be less than what you had anticipated?

4 A. Oh, yeah. Then we started talking to several
5 people or entities.

6 Q. And presumably there was no success in
7 obtaining more -- more money or a more beneficial loan?

8 A. Yeah. We raised -- we decided to put out a
9 \$20 million raise and we raised 15.

10 Q. And that was subsequent to American Bank
11 making its \$15 million loan?

12 A. Yes.

13 Q. So at the time and prior to American Bank
14 making its loan, were you successful in identifying
15 other avenues for financing?

16 A. Yes. There were other avenues of financing.

17 Q. For more money?

18 A. Oh, I don't know. We didn't get as far as to
19 a commitment status stage with anybody that I remember.

20 Q. Do you recall who else you were talking with,
21 what other banks or entities?

22 A. We talked to several private equity firms
23 that do that type of development. I don't remember
24 what other banks. But, yeah, we -- I'm sure we spoke
25 to several.

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho
limited liability company, THORCO, INC., an
Idaho corporation, CONSOLIDATED SUPPLY
COMPANY, an Oregon corporation,
INTERSTATE CONCRETE & ASPHALT
COMPANY, an Idaho corporation, CONCRETE
FINISHING, INC., an Arizona corporation, THE
TURF CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a Delaware
corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho corporation,
TAYLOR ENGINEERING, INC., a Washington
corporation, PRECISION IRRIGATION, INC.,
an Arizona corporation and SPOKANE
WILBERT VAULT CO., a Washington
corporation, d/b/a WILBERT PRECAST,

Defendants.

And

Case No. CV 09-2619

JUDGMENT AND DECREE OF
FORECLOSURE OF AMERICAN BANK'S
MORTGAGE SECURED BY BLACK ROCK
NORTH

CLIFFORD T. HAYES 19P I 2305927000
KOOTENAI CO. RECORDER Page 1 of 19
BBB Date 03/11/2011 Time 15:34:28
REC-REQ OF WINSTON & CASHATT
RECORDING FEE: 64.00
2305927000 XJ

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH.

EXHIBIT

AB-4

231

1 TAYLOR ENGINEERING, INC., a Washington
2 corporation,

3 Third-Party Plaintiff

4 v.

5
6 ACI NORTHWEST, INC., an Idaho corporation;
7 STRATA, INC., an Idaho corporation; and
8 SUNDANCE INVESTMENTS, LLP, a limited
liability partnership,

Third-Party Defendants.

9 And

10 ACI NORTHWEST, INC., an Idaho corporation,
11 Cross-Claimant,

12 v.

13 AMERICAN BANK, a Montana banking
14 corporation, BRN DEVELOPMENT, INC., an
15 Idaho corporation, BRN INVESTMENTS, LLC,
16 an Idaho limited liability company, LAKE VIEW
17 AG, a Liechtenstein company, BRN LAKE
18 VIEW JOINT VENTURE, an Idaho general
19 partnership, ROBERT LEVIN, Trustee for the
20 ROLAND M. CASATI FAMILY TRUST, dated
21 June 5, 2008, E. RYKER YOUNG, Trustee for
22 the E. RYKER YOUNG REVOCABLE TRUST,
23 MARSHALL CHESROWN a single man,
24 THORCO, INC., an Idaho corporation,
25 CONSOLIDATED SUPPLY COMPANY, an
26 Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a Delaware
corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho corporation,
TAYLOR ENGINEERING, INC., a Washington
corporation and PRECISION IRRIGATION,
INC., an Arizona corporation.

Cross Claim Defendants

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH - 2

02-25-'11 10:48 FROM-

I. JUDGMENT SUMMARY

JUDGMENT CREDITOR:	American Bank
JUDGMENT DEBTOR:	BRN Development, Inc.
Principal Amount of Debt:	\$14,600,000.00
Accrued Interest to February 24, 2011 (\$3,560.07 Per Diem):	\$2,709,445.50
Costs, Attorneys' Fees and Expenses Through January 14, 2011:	\$279,133.07
Late Charges:	\$22,431.80
Advance to Prevent Waste to Black Rock North:	\$50,000.00
Total Mortgage Indebtedness ¹	\$17,661,012.37
Interest Rate on Mortgage Indebtedness	8.75%
Attorneys Fees, Costs, and Other Recovery Amounts Shall Bear Interest at the Judgment Rate Per Annum:	12%
Attorneys for Judgment Creditor:	Nancy L. Isserlis and Elizabeth A. Telleson Winston & Cashatt
Attorneys for Judgment Debtor:	John R. Layman Layman, Layman and Robinson

II. INTRODUCTION

This matter came before the Court on February 24, 2011, upon American Bank's Motion for Partial Summary Judgment against Defendant's BRN Development, Inc.; BRN Investments, LLC; BRN-Lake View Joint Venture; the Roland E. Casati Family Trust Dated June 5, 2008; the E. Ryker Young

¹ Total Mortgage Indebtedness will be updated prior to Sheriff's Sale.

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH - 3

02-25-'11 10:48 FROM-

1 Revocable Trust; Thorco, Inc.; Polin and Young Construction, Inc.; Taylor Engineering, Inc.; and
 2 Marshall Chesrown. The parties were represented by their counsel of record.

3 Prior to reaching the decision set forth below, the Court heard oral argument from Elizabeth A.
 4 Tellesen of Winston & Cashatt, counsel of record for Plaintiff American Bank, and from Defendants
 5 counsel of record and considered the pleadings and records filed herein. In accordance with Rule 56 of
 6 the Idaho Rules of Civil Procedure this Court granted American Bank's motion as set forth in its Order
 7 Granting Plaintiff's Motion for Partial Summary Judgment, entered the ____ day of ____, 2011.

8 III. JUDGMENT

9 Therefore, IT IS HEREBY ADJUDGED AND DECREED and judgment is entered as follows:

10 1. American Bank's Motion for Partial Summary Judgment against Defendants BRN
 11 Development, Inc.; BRN Investments, LLC; BRN-Lake View Joint Venture; Roland E. Casati Family
 12 Trust, Dated June 5, 2008; E. Ryker Young Revocable Trust; Thorco, Inc.; Polin and Young
 13 Construction, Inc.; and Taylor Engineering, Inc. is GRANTED as set forth in the Order Granting
 14 Plaintiff's Motion for Partial Summary Judgment;

15 2. American Bank's Mortgage, recorded on February 6, 2007, with the Kootenai County
 16 Assessor under Instrument No. 2081643000 is the first and paramount lien upon Black Rock North,
 17 legally described in Exhibit A, and the whole thereof constitutes security for the payment of the
 18 Judgment set forth herein, and all right, title, claim or interest of the Defendants BRN Development,
 19 Inc.; BRN Investments, LLC; BRN-Lake View Joint Venture; Roland E. Casati Family Trust, Dated
 20 June 5, 2008; E. Ryker Young Revocable Trust; Thorco, Inc.; Polin and Young Construction, Inc.; and
 21 Taylor Engineering, Inc. or any of them, and of all persons claiming by, through, or under them, is
 22 junior and subordinate to the American Bank's Mortgage;

23 JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
 24 BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH - 4

Received Feb-24-11 11:37am

From-509 898 1416

TO-JUDGE LUSTER

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3. The amount of operating expenses owed to the Receiver as of the date of Judgment is Five Hundred Thirty-Six Thousand Five Hundred Fifty-Two Dollars and 23/100 (\$536,552.23)², which will continue to accrue until the Receivership is terminated by an order of this Court;

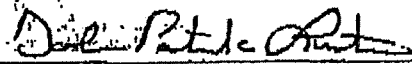
4. The mortgage indebtedness due to American Bank under the Loan Documents is Seventeen Million Six Hundred Sixty-One Thousand Twelve Dollars and 37/100 (\$17,661,012.37), and judgment is hereby entered against BRN Development, Inc. in that amount;

5. Black Rock North shall be sold pursuant to the law and practice of this Court by the Sheriff and the proceeds of the sale, pursuant to IC § 6-101, shall be applied first to the costs of the court, expenses of sale, operating expenses of the Receiver then due and owing, then to the mortgage indebtedness. And, if there are surplus proceeds from the sale, then those shall be deposited into the registry of the court for disbursement to junior creditors in order of their priority as adjudged by this court pursuant to Idaho Code § 45-512 and 45-1302;

6. American Bank has the right to credit bid and purchase at the Sheriff's Sale; and

7. Following the Sheriff's Sale of Black Rock North, no defendant or any person claiming by, through or under and defendant, shall have any further right, title, interest, or claim in or to Black Rock North except for its statutory right of redemption.

DATED this 24th day of February, 2011.


HONORABLE JOHN P. LUSTER

² Amount of operating expenses owed to the Receiver will be updated prior to Sheriff's Sale.

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH - 5

CLERK'S CERTIFICATE OF SERVICE

1 The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 24 day of
 2 2011, foregoing was caused to be served on the following persons in the manner indicated:

3 John R. Layman	VIA REGULAR MAIL	<input type="checkbox"/>
4 Layman, Layman & Robinson, PLLP	VIA CERTIFIED MAIL	<input type="checkbox"/>
601 South Division Street	HAND DELIVERED	<input checked="" type="checkbox"/>
Spokane, WA 99202	BY FACSIMILE 509-624-2902	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
5 Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake 6 View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008		
7 Barry Davidson	VIA REGULAR MAIL	<input type="checkbox"/>
8 Davidson Backman Medeiros	VIA CERTIFIED MAIL	<input type="checkbox"/>
601 West Riverside #1550	HAND DELIVERED	<input checked="" type="checkbox"/>
Spokane, WA 99201	BY FACSIMILE 509-623-1660	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
10 Co-Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall 11 Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008		
12 Charles B. Lempestis	VIA REGULAR MAIL	<input type="checkbox"/>
13 Attorney at Law	VIA CERTIFIED MAIL	<input type="checkbox"/>
201 W. Seventh Avenue	HAND DELIVERED	<input checked="" type="checkbox"/>
Post Falls, ID 83854	BY FACSIMILE (208) 773-1044	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
15 Attorney for Defendant Thorco, Inc.		
16 Edward Anson	VIA REGULAR MAIL	<input type="checkbox"/>
Witherspoon, Kelley, Davenport & Toole, P.S.	VIA CERTIFIED MAIL	<input type="checkbox"/>
601 Northwest Blvd. #300	HAND DELIVERED	<input checked="" type="checkbox"/>
Coeur d'Alene, ID 83814	BY FACSIMILE (208) 667-8470	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
18 Attorney for Defendants Wadsworth Golf Construction Company of the Southwest, The Turf Corporation and 19 Precision Irrigation Inc.		
20 Richard Campbell	VIA REGULAR MAIL	<input type="checkbox"/>
Campbell, Bissell & Kirby, PLLC	VIA CERTIFIED MAIL	<input type="checkbox"/>
7 South Howard Street #416	HAND DELIVERED	<input checked="" type="checkbox"/>
Spokane, WA 99201	BY FACSIMILE 509-455-7111	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
22 Attorney for Defendant Polin & Young Construction		
23 Greg Embrey	VIA REGULAR MAIL	<input type="checkbox"/>
Witherspoon, Kelley, Davenport & Toole, P.S.	VIA CERTIFIED MAIL	<input type="checkbox"/>
601 Northwest Blvd. #300	HAND DELIVERED	<input checked="" type="checkbox"/>
Coeur d'Alene, ID 83814	BY FACSIMILE (208) 667-8470	<input checked="" type="checkbox"/>
	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>
26 Attorney for Defendant Taylor Engineering		

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH

02-25-'11 10:49 FROM-

1	Randall A. Poterian & C. Clayton Gill	VIA REGULAR MAIL	<input type="checkbox"/>
2	Moffatt, Thomas, Barren, Rock & Fields, Chartered	VIA CERTIFIED MAIL	<input type="checkbox"/>
3	101 South Capital Blvd., 10 th Floor	HAND DELIVERED	<input checked="" type="checkbox"/>
	P.O. Box 829	BY FACSIMILE (208) 385-5384	<input checked="" type="checkbox"/>
3	Boise, Idaho 83701	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
4	Co-Attorney for Plaintiff	VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
5	Elizabeth Tellesen & Nancy Isserlis	VIA REGULAR MAIL	<input type="checkbox"/>
6	Winston & Cashart	VIA CERTIFIED MAIL	<input type="checkbox"/>
6	601 West Riverside Avenue #1900	HAND DELIVERED	<input checked="" type="checkbox"/>
	Spokane, WA 99201	BY FACSIMILE (509) 838-6131	<input checked="" type="checkbox"/>
7	Attorneys for Plaintiff	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
		VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
8	Doug Martice	VIA REGULAR MAIL	<input type="checkbox"/>
9	Ramsden & Lyons	VIA CERTIFIED MAIL	<input type="checkbox"/>
9	700 Northwest Boulevard	HAND DELIVERED	<input checked="" type="checkbox"/>
10	Coeur d'Alene, ID 83816-1336	BY FACSIMILE (208) 664-5884	<input checked="" type="checkbox"/>
		VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
11	Attorney for Defendant Ryker Young, Trustee of the Ryker Young Revocable Trust	VIA REGULAR MAIL	<input type="checkbox"/>
12	Rick Harris	VIA CERTIFIED MAIL	<input type="checkbox"/>
13	Ramsden & Lyons	HAND DELIVERED	<input checked="" type="checkbox"/>
13	700 Northwest Boulevard	BY FACSIMILE (208) 664-5884	<input checked="" type="checkbox"/>
	Coeur d'Alene, ID 83816-1336	BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
14	Attorney for Court Appointed Receiver	VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
15	Steven C. Wetzel & Kevin P. Holt	VIA REGULAR MAIL	<input type="checkbox"/>
16	Wetzel Wetzel & Holt, P.L.L.C.	VIA CERTIFIED MAIL	<input type="checkbox"/>
16	616 North 4 th Street, Suite 3	HAND DELIVERED	<input checked="" type="checkbox"/>
17	Coeur d'Alene, ID 83814	BY FACSIMILE (208) 664-6741	<input checked="" type="checkbox"/>
		BY ELECTRONIC MAIL	<input checked="" type="checkbox"/>
18	Attorneys for Third Party Defendant ACI	VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
19	Corey J. Rippee	VIA REGULAR MAIL	<input type="checkbox"/>
19	Eberle, Berlin, Kading, Turnbow, McKivven	VIA CERTIFIED MAIL	<input type="checkbox"/>
20	P.O. Box 1368	HAND DELIVERED	<input checked="" type="checkbox"/>
20	Boise, ID 83701	BY FACSIMILE (208) 344-8542	<input checked="" type="checkbox"/>
		VIA FEDERAL EXPRESS	<input checked="" type="checkbox"/>
21	Attorney for Third Party Defendant Sundance Investments		

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CLERK OF THE COURT

JUDGMENT AND DECREE OF FORECLOSURE OF AMERICAN
BANK'S MORTGAGE SECURED BY BLACK ROCK NORTH

Received Feb-24-11 11:37am

From-609 838 1416

To-JUDGE LUSTER

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EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8:

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 558.0 FEET;

THENCE SOUTH 88 DEGREES 54'39" EAST, 956.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 24'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 151.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING A

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, N.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 88 DEGREES 54' 38" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1929.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 45" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.03 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.48 FEET;

THENCE SOUTH 86 DEGREES 54' 29" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 29" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING A

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.09 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 891.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 275.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 28" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 287.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 59.21 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 388.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 200 FEET THROUGH A CENTRAL

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 30" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 531.93 FEET;

THENCE NORTH 03 DEGREES 37' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 8 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 88 DEGREES 17' 44" EAST, 53.80 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET TO THE TRUE POINT OF BEGINNING;

10.15000, 0

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 82 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY, 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A RADIUS OF 820.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 89.81 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 586.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.19 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET

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EXHIBIT "A" LEGAL DESCRIPTION
(continued)

TO THE TRUE POINT OF BEGINNING:

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 623.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 539.83 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL B:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 5, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "1" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E" OF
QUEST TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1908262 IN SAID COUNTY AND
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4; THENCE

NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A DISTANCE OF
185.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.50 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.55 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 06 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 53.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 67.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 88.32 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

NORTH 03 DEGREES 34' 02" EAST 183.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.89 FEET; THENCE

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET, THENCE .

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4; THENCE

SOUTH 80 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 1451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 60 DEGREES 45' 41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLEGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44' 36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31' 30" WEST, A DISTANCE OF 210.95 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13' 28" EAST, A DISTANCE OF 241.55 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (CN 1/16 CORNER):

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFF'S BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 52 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.39 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREE 51' 53" EAST, 828.02 FEET;

THENCE SOUTH 2 DEGREES 28' 05" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 400.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREE 08' 28" EAST, AND LEAVING SAID CENTERLINE 935.76 FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4:

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.46 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 48" WEST, A DISTANCE OF 260.87 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, 980.43 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE, 65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOREY BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 89.89 FEET;

THENCE NORTH 88 DEGREES 16' 36" EAST, 78.83 FEET TO THE POINT OF BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE PLAT OF MOLEAN MEADOWS RECORDED IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 03'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.73 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 83 DEGREES 00'05" EAST, A DISTANCE OF 287.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SE 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'55" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1824.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO HABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495827 DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD;

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY.

EXHIBIT "A" LEGAL DESCRIPTION
(continued)

STATE OF IDAHO, LYING EAST OF IDFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 48'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELL GROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

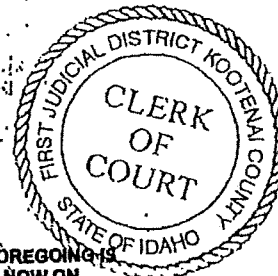
- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

STATE OF IDAHO
COUNTY OF KOOTENAI

THIS IS TO CERTIFY THAT THE FOREGOING IS
A TRUE COPY OF THE ORIGINAL NOW ON
FILE OR RECORD IN THIS OFFICE.

SEALED ON THIS 11 DAY OF MARCH
CLIFFORD T. HAYES, CLERK OF THE DISTRICT
COURT BY Diana Madson
Deputy



Pages 1-19 of 19

2011 AUG 19 PM 4:38

CLERK DISTRICT COURT

Molly Rosenbush
DEPUTY

NANCY L. ISSERLIS, ISB #7331
ELIZABETH A. TELLESSEN, ISB #7393
WINSTON & CASHATT
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RANDALL A. PETERMAN, ISB #1944
C. CLAYTON GILL, ISB # 4973
MOFFATT, THOMAS, BARRETT, ROCK
& FIELDS, CHARTERED
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Facsimile: (208) 385-5384
rap@moffatt.com & ccg@moffatt.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho

Case No. CV 09-2619

**AFFIDAVIT OF BRYAN KLEIN IN
SUPPORT OF AMERICAN BANK'S
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT RE COUNT 5 OF
ACT'S FIRST AMENDED CROSS CLAIM**

AFFIDAVIT OF BRYAN KLEIN - 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

ORIGINAL

250

1 limited liability company, THORCO, INC., an
2 Idaho corporation, CONSOLIDATED SUPPLY
3 COMPANY, an Oregon corporation,
4 INTERSTATE CONCRETE & ASPHALT
5 COMPANY, an Idaho corporation, CONCRETE
6 FINISHING, INC., an Arizona corporation, THE
7 TURF CORPORATION, an Idaho corporation,
8 WADSWORTH GOLF CONSTRUCTION
9 COMPANY OF THE SOUTHWEST, a Delaware
10 corporation, POLIN & YOUNG
11 CONSTRUCTION, INC., an Idaho corporation,
12 TAYLOR ENGINEERING, INC., a Washington
13 corporation, PRECISION IRRIGATION, INC.,
14 an Arizona corporation and SPOKANE
15 WILBERT VAULT CO., a Washington
16 corporation, d/b/a WILBERT PRECAST,

Defendants.

And

12 TAYLOR ENGINEERING, INC., a Washington
13 corporation,

Third-Party Plaintiff,

v.

16 ACI NORTHWEST, INC., an Idaho corporation;
17 STRATA, INC., an Idaho corporation; and
18 SUNDANCE INVESTMENTS, LLP, a limited
19 liability partnership,

Third-Party Defendants.

And

21 ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

v.

25 AMERICAN BANK, a Montana banking

26 AFFIDAVIT OF BRYAN KLEIN - 2

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd. Suite 206
Coeur d'Alene Idaho 83814
Phone: (208) 687-2103

1 corporation, BRN DEVELOPMENT, INC., an
2 Idaho corporation, BRN INVESTMENTS, LLC,
3 an Idaho limited liability company, LAKE VIEW
4 AG, a Liechtenstein company, BRN-LAKE
5 VIEW JOINT VENTURE, an Idaho general
6 partnership, ROBERT LEVIN, Trustee for the
7 ROLAND M. CASATI FAMILY TRUST, dated
8 June 5, 2008, E. RYKER YOUNG, Trustee for
9 the E. RYKER YOUNG REVOCABLE TRUST,
10 MARSHALL CHESROWN a single man,
11 THORCO, INC., an Idaho corporation,
12 CONSOLIDATED SUPPLY COMPANY, an
13 Oregon corporation, THE TURF
14 CORPORATION, an Idaho corporation,
15 WADSWORTH GOLF CONSTRUCTION
16 COMPANY OF THE SOUTHWEST, a Delaware
17 corporation, POLIN & YOUNG
18 CONSTRUCTION, INC., an Idaho corporation,
19 TAYLOR ENGINEERING, INC., a Washington
20 corporation and PRECISION IRRIGATION,
21 INC., an Arizona corporation,

22 Cross Claim Defendants.

23 STATE OF IDAHO)
24 : ss.
25 County of Kootenai)

26 I, Bryan Klein, being first duly sworn on oath deposes and says:

1. I am the President of American Bank, Plaintiff in the above mentioned matter. I am over the age of 18, and competent to testify to the matters set out in this affidavit.

2. Prior to making the loan to BRN Development American Bank obtained an appraisal of the property commonly known as Black Rock North, in which the as-is market value of the property was determined to be \$20,000,000. The letter stating the opinion of value is attached hereto as **Exhibit AB – A (AB001980-AB001984)**, without the report, which contains the text, exhibits, and Addenda.

AFFIDAVIT OF BRYAN KLEIN - 3

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd. Suite 208
Coeur d'Alene Idaho 83814
Phone: (208) 887-2103

1 3. American Bank agreed to extend BRN Development a \$15,000,000 revolving line of
2 credit, 75% of the as-is market value of the property, which was consistent with its underwriting
3 guidelines for commercial real estate.

4 4. American Bank made all advances on the revolving line of credit requested by BRN
5 Development totaling in aggregate \$18,525,000.
6

7 5. On or about January 22, 2009, I sent a letter on behalf of American Bank, attached hereto
8 as **Exhibit AB – B (AB002438)**, to BRN Development, Inc. specifically advising it of the Events of
9 Default that had occurred under sections 7.1.1 and 7.1.4 of the Revolving Credit Agreement, attached
10 hereto as **Exhibit AB – C (AB002409–AB002411)**.

11 6. American Bank obtained another appraisal of Black Rock North in September 2009. The
12 letter dated September 25, 2009, stated the opinion of value is attached hereto as **Exhibit AB – D**
13 **(AB004721 – AB004722)**, without the report, which contains the text, exhibits, and Addenda, and
14 concludes the as-is market value of Black Rock North was \$15,000,000.
15

16 7. American Bank requested and obtained another appraisal of Black Rock North in October
17 2010. The letter stating the opinion of value is attached hereto as **Exhibit AB - E (AB004910 –**
18 **AB004911)**, without the report, which contains the text, exhibits, and Addenda, and concludes the as-is
19 market value of Black Rock North was \$12,000,000.
20

21 8. American Bank, together with its loan participants agreed to and has funded the expenses
22 of the Receiver in order to preserve and protect Black Rock North in the approximate amount of
23 \$645,381.00.
24

25
26 AFFIDAVIT OF BRYAN KLEIN - 4

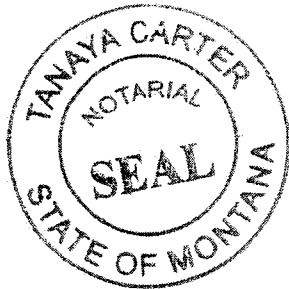
Winston & Cashatt
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Phone: (208) 667-2103


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DATED this 19th day of August, 2011.


BRYAN KLEIN

SUBSCRIBED AND SWORN TO before me this 19th day of August, 2011.




Notary Public in and for the State
of ~~Washington~~ Belgrade, residing in Belgrade
My appointment expires 2/21/2013.

TANAYA CARTER
NOTARY PUBLIC for the State of Montana
Residing at Belgrade, Montana
My Commission Expires February 21, 2013

AFFIDAVIT OF BRYAN KLEIN - 5

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 867-2103

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 19 day of August, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

John R. Layman
Layman, Layman & Robinson, PLLP
601 South Division Street
Spokane, WA 99202

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE 509-624-2902
BY ELECTRONIC MAIL
VIA FEDERAL EXPRESS

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Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee of the E. Ryker Young Revocable Trust

Barry Davidson
Davidson Backman Medeiros
601 West Riverside #1550
Spokane, WA 99201

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE 509-623-1660
BY ELECTRONIC MAIL
VIA FEDERAL EXPRESS

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Co-Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee of the E. Ryker Young Revocable Trust

Charles B. Lempesis
Attorney at Law
201 W. Seventh Avenue
Post Falls, ID 83854

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE (208) 773-1044
BY ELECTRONIC MAIL
VIA FEDERAL EXPRESS

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Attorney for Defendant Thorco, Inc.

Edward Anson
Witherspoon, Kelley, Davenport & Toole, P.S.
608 Northwest Blvd. #300
Coeur d'Alene, ID 83814

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE (208) 667-8470
BY ELECTRONIC MAIL
VIA FEDERAL EXPRESS

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Attorney for Defendants Wadsworth Golf Construction Company of the Southwest, The Turf Corporation and Precision Irrigation Inc.

Richard Campbell
Campbell Bissell
7 South Howard Street #416
Spokane, WA 99201

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE 509-455-7111
BY ELECTRONIC MAIL
VIA FEDERAL EXPRESS

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Attorney for Defendant Polin & Young Construction

AFFIDAVIT OF BRYAN KLEIN - 6

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd. Suite 208
Coeur d'Alene, Idaho 83814
Phone: (208) 897-2103

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|----|--|-----------------------------|-------------------------------------|
| 1 | Greg Embrey | VIA REGULAR MAIL | <input type="checkbox"/> |
| 2 | Witherspoon, Kelley, Davenport & Toole | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| | 608 Northwest Blvd. #300 | HAND DELIVERED | <input type="checkbox"/> |
| 3 | Coeur d'Alene, ID 83814 | BY FACSIMILE (208) 667-8470 | <input type="checkbox"/> |
| | | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| 4 | Attorney for Defendant Taylor Engineering | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 5 | Randall A. Peterman & C. Clayton Gill | VIA REGULAR MAIL | <input type="checkbox"/> |
| | Moffatt, Thomas, Barrett, Rock & Fields, Chartered | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| 6 | 101 South Capital Blvd., 10 th Floor | HAND DELIVERED | <input type="checkbox"/> |
| | P.O. Box 829 | BY FACSIMILE (208) 385-5384 | <input type="checkbox"/> |
| 7 | Boise, Idaho 83701 | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| | | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 8 | Co-Attorney for Plaintiff | | |
| 9 | Doug Marfice | VIA REGULAR MAIL | <input type="checkbox"/> |
| | Ramsden & Lyons | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| | 700 Northwest Boulevard | HAND DELIVERED | <input type="checkbox"/> |
| 10 | Coeur d'Alene, ID 83816-1336 | BY FACSIMILE (208) 664-5884 | <input type="checkbox"/> |
| | | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| 11 | Attorney for Defendant Ryker Young, Trustee of the Ryker Young Revocable Trust | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 12 | | | |
| | Rick Harris | VIA REGULAR MAIL | <input type="checkbox"/> |
| 13 | Ramsden & Lyons | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| | 700 Northwest Boulevard | HAND DELIVERED | <input type="checkbox"/> |
| 14 | Coeur d'Alene, ID 83816-1336 | BY FACSIMILE (208) 664-5884 | <input type="checkbox"/> |
| | | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| 15 | Attorney for Court Appointed Receiver | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 16 | Steven C. Wetzel | VIA REGULAR MAIL | <input type="checkbox"/> |
| | James, Vernon & Weeks | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| 17 | 1626 Lincoln Way | HAND DELIVERED | <input checked="" type="checkbox"/> |
| | Coeur d'Alene, ID 83814 | BY FACSIMILE (208) 664-1684 | <input checked="" type="checkbox"/> |
| 18 | | BY ELECTRONIC MAIL | <input type="checkbox"/> |
| | Attorneys for Third Party Defendant ACI | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 19 | | | |
| | Corey J. Rippee | VIA REGULAR MAIL | <input type="checkbox"/> |
| 20 | Eberle, Berlin, Kading, Turnbow, McKlveen | VIA CERTIFIED MAIL | <input type="checkbox"/> |
| | P.O. Box 1368 | HAND DELIVERED | <input type="checkbox"/> |
| 21 | Boise, ID 83701 | BY FACSIMILE (208) 344-8542 | <input type="checkbox"/> |
| | | VIA FEDERAL EXPRESS | <input type="checkbox"/> |
| 22 | Attorney for Third Party Defendant Sundance Investments | | |

Elizabeth A. Tellessen
 ELIZABETH A. TELLESSEN

- 25 256814.doc
- 26 AFFIDAVIT OF BRYAN KLEIN - 7

Winston & Coshatt
 A PROFESSIONAL SERVICE CORPORATION
 250 Northwest Blvd. Suite 206
 Coeur d'Alene, Idaho 83814
 Phone: (208) 667-2103



Cushman & Wakefield of Colorado, Inc.
1050 Seventeenth Street, Suite 1400
Denver, CO 80265
303.813.6495 Tel
303.813.6499 Fax

December 22, 2006

Mr. Leon Royer
President
American Bank of Montana
1632 West Main Street

Re: Appraisal of Real Property
In a Self Contained Report

**Black Rock North and The Remaining
Unsold Lots at The Club at Black Rock**

C&W File ID: 06-51001-9205

Dear Mr. Royer:

In fulfillment of our agreement as outlined in the Letter of Engagement, we are pleased to transmit our appraisal report on the property referenced above.

The value opinion reported below is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the report. We particularly call your attention to the extraordinary assumptions and hypothetical conditions in this report.

This report was prepared for American Bank of Montana, their successors and assigns, and is intended for their specified use. It may be distributed to the client's attorneys, accountants, advisors, investors, potential mortgage participants and rating agencies. This appraisal report has been prepared in accordance with our interpretation of your institutions guidelines, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the Uniform Standards of Professional Appraisal Practice (USPAP), including the Competency Provision.

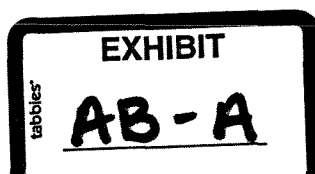
The property was inspected by and the report was prepared by Dean R. Paauw, MAI. Significant professional assistance was provided by Jeremy N. Lacy, CFA.

The subject of this appraisal consists of the following:

- The Black Rock North property consists of 1001.00 acres of vacant residential land planned for an upscale resort Club community to contain 325 units and various amenities.
- The 52 remaining, unsold developed lots at The Club at Black Rock

Black Rock North is a 1001.00-acre tract of land with rolling hills, featuring numerous open and forested areas. The property is approved for development through a Planned Unit Development (PUD), which will consist of an 18-hole, Tom Weiskopf designed golf course with a 27,500 square foot clubhouse. There will also be an executive Par 3 course located on the site. In addition, other amenities will include an equestrian center and a kids camp (Kootenai Cabin) for residents. We have also provided a market value estimate with the value contribution of the future Club at Black Rock North operations, which includes golf memberships and operating losses.

VALUATION SERVICES



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Mr. Leon Royer
American Bank of Montana
December 22, 2006
Page 2

The second component of the subject property consists of the 52 remaining unsold single-family lots at **The Club at Black Rock**, a 650-acre Jim Engh-designed golf course community with 369 units which includes residential lots (252 in The Club and 42 in Polo Cielo), cabin sites (39), and golf cottages (36) located just south and adjacent to Black Rock North. The project overlooks Lake Coeur d'Alene which is a significant asset to this project in terms of lot view premiums and as a recreational amenity. The 31,000 square foot clubhouse opened in May 2004, while the golf course opened in July 2003. We have also included a market value of the Club at Black Rock with Club memberships, although no deduction was made for Club operating losses.

Based on our Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the As Is market value of the Fee Simple estate of the proposed 1001.00-acre Black Rock North project, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, on December 4, 2006, is:

**As Is Market Value
Black Rock North
(Including Club Memberships)
THIRTY FIVE MILLION SIX HUNDRED THOUSAND DOLLARS
\$35,600,000**

The value contribution of the non-realty memberships equates to \$15,600,000.

**As Is Market Value
Black Rock North
(Excluding Club Memberships)
TWENTY MILLION DOLLARS
\$20,000,000**

Based on our Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the As Complete market value of the Fee Simple estate of the proposed 1001.00-acre Black Rock North project, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, on December 4, 2006, is:

**As Complete Market Value
Black Rock North
(Including Club Memberships)
EIGHTY THREE MILLION THREE HUNDRED THOUSAND DOLLARS
\$83,300,000**

The value contribution of the non-realty memberships equates to \$17,700,000.

**As Complete Market Value
Black Rock North
(Excluding Club Memberships)
SIXTY FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS
\$65,500,000**

Mr. Leon Royer
American Bank of Montana
December 22, 2006
Page 3

Based on our Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the As Is market value of the Fee Simple estate of the remaining lots at The Club at Black Rock, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, on December 4, 2006, is:

**As Is Market Value
The Club at Black Rock
52 Remaining Unsold Lots
(Including Memberships)
TWENTY MILLION TWO HUNDRED THOUSAND DOLLARS
\$20,200,000**

The value contribution of the non-realty memberships equates to \$4,800,000.

**As Is Market Value
The Club at Black Rock
52 Remaining Unsold Lots
(Excluding Memberships)
FIFTEEN MILLION THREE HUNDRED THOUSAND DOLLARS
\$15,300,000**

Based on recent market transactions, as well as discussions with market participants, a sale of the subject properties at the above-stated opinion of market value would have required an exposure time of approximately twelve (12) months. Furthermore, a marketing period of approximately twelve (12) months is currently warranted for the subject properties.

Extraordinary Assumptions

An extraordinary assumption is defined by the *Uniform Standards of Professional Appraisal Practice* (2002 Edition, The Appraisal Foundation, page 3) as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

1. Because of the economic size of the subject, this analysis assumes that the owner/developer is capable of constructing master planned communities of this type and has the financial capabilities and competence for complete community build-out.
2. The value estimates are dependent upon completion of construction of the planned improvements (e.g., lot infrastructure, amenities, etc.) in a timely, workmanlike manner and in substantial conformance with the information provided to the appraisers.
3. It is assumed that prudent management and aggressive marketing will be implemented during all phases of the sellout of the community.

4. Our financial analysis is based on estimates and assumptions that were developed in connection with this appraisal engagement. It is, however, inevitable that some assumptions will not materialize and that unanticipated events may occur which will cause actual achieved operating results to differ from the financial analyses contained in this report, and these differences may be material. It should be further noted that we are not responsible for the effectiveness of future management and marketing efforts upon which the projected results contained in this report may depend.
5. We have assumed that the infrastructure costs as reported to us by the representative of the current ownership in this analysis are sufficient to construct the remaining required infrastructure within the subject development.
6. We were provided with the size of existing and prospective lots and planned density by the owner/developer. We assume that the development will, in large part, remain true to the project as related to the appraisers in terms of lot sizing, placement, pricing, and amenities. We acknowledge that there may be future market fluctuations that may necessitate some changes in plans in order to maximize profitability.
7. We assume that the developer will adhere to all governmental dictates in respect to development, including wetlands and other regulations.
8. The developer owns the adjacent Club at Black Rock and intends to market and operate the two projects together for the benefit of the prospective homeowners and members so that homeowner/members of both Club at Black Rock and Black Rock North could utilize the facilities, amenities and services of both clubs. There is a distinct marketing advantage in offering two private golf courses to homeowner/members. Our lot pricing and absorption projections have taken this factor into account.

Hypothetical Conditions

A hypothetical condition is defined by the *Uniform Standards of Professional Appraisal Practice* (2002 Edition, The Appraisal Foundation, page 3) as "that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

The market values as complete have the hypothetical condition that the infrastructure and all amenities are completed as of the current date of value.

Mr. Leon Royer
American Bank of Montana
December 22, 2006
Page 5

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and Addenda.

Respectfully submitted,

CUSHMAN & WAKEFIELD OF COLORADO, INC.

Valuation Services, Capital Markets Group



Dean R. Paauw, MAI
Director
Idaho Temporary Certified General Appraiser
License No. TCGA-1498
303.813.6495 Office Direct
303.813.6499 Fax

303.809.0852



Bryan J. Klein
President

January 22, 2009

Mr. Marshall Chesrown, President
BRN Development, Inc.
1450 Northwest Blvd., Suite 302
Coeur d'Alene, Idaho 83814

RE: Notice of default under the terms of the Revolving Credit Agreement
dated February 2, 2007

Dear Marshall:

Thank you again for organizing our meeting on January 13th. We enjoyed meeting your team and the candid discussion relative to our business relationship.

In order to comply with policy, this letter is intended to provide formal notification of certain Events of Default under the terms of the Revolving Credit Agreement. They are as follows:

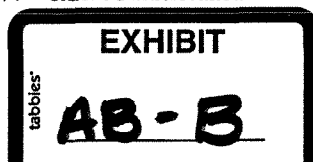
- 7.1.1 Payment default for the payments dated December 2, 2008 and January 2, 2008 in the amount of \$54,141.67 and \$51,404.17, respectively.
- 7.1.4 Filing of third party liens on the Collateral

As of the date of this letter, the Lender has not elected to impose the Default Interest Rate or to take up other remedies. However, Lender reserves the right to do so at any time in accordance with the Loan Documents. The withholding of the exercise of any right or remedy afforded under the Revolving Credit Agreement, the Loan Document or under governing law is not, and is not intended to be, a waiver of such rights or an agreement to forbear or delay in any manner the exercise of such rights or remedies at any time with respect to the Borrower, any Guarantor or any other person at any time in the future or with respect to the foregoing Events of Default or any other Event of Default.

Sincerely,

cc: Rocky Mountain Bank (Attn: Mark Hendrickson, President)
Marshall Chesrown

P.O. Box 1970 • 1612 West Main Street • Bozeman, MT 59711-1970
406.522.3538 • Fax 406.522.3577 • bklein@americanbankmontana.com



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AB002438

6406036

REVOLVING CREDIT NOTE

\$15,000,000.00

February 2, 2007

FOR VALUE RECEIVED, the undersigned, BRN Development, Inc., (the "Borrower"), delivers this Revolving Credit Note (the "Note") under the Revolving Credit Agreement of even date (the "Agreement") and promises to pay to the order of American Bank (the "Lender"), at its office located at 1612 W. Main Street, Bozeman, Montana 59715, the principal amount of Fifteen Million Dollars (\$15,000,000.00), or the aggregate unpaid principal amount of all Loans when and as provided herein or under the Agreement.

Capitalized terms used in this Note are accorded the meaning given such terms in the Agreement.

The principal balance of this Note from time to time will bear interest (computed on the basis of a year of 360 days for the actual number of days elapsed) at the Interest Rate or Default Interest Rate, as applicable, from the date of this Note until fully paid and satisfied. In addition to the payments otherwise required by this Note or the Agreement, Borrower will pay all accrued and unpaid interest, in arrears, on the Loan (a) for interest accrued during each calendar month, on the 2nd calendar day of the succeeding calendar month and (b) on the Maturity Date.

Borrower shall make payments of principal on this Note as required under the Agreement. Without limiting the foregoing, unless otherwise permitted under the Agreement, Borrower shall fully pay and satisfy the entire principal balance of the Note on the Maturity Date.

All payments by Borrower shall be applied to the principal or accrued and unpaid interest on this Note as provided in the Agreement.

The Borrower authorizes the Lender to endorse on a schedule annexed to this Note, or to otherwise evidence on Lender's books and records, all Loans made to the Borrower and all payments of principal amounts in respect of such Loans, which endorsements or evidence shall, in the absence of manifest error, be conclusive as to the outstanding principal amount of all Loans; provided, however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligations of the Borrower under the Revolving Credit Agreement or this Note.

The Agreement, among other things, contains provisions for acceleration of the maturity of this Note upon the happening of certain stated events, and also for payments of the principal balance or accrued interest on this Note, prior to the Maturity Date upon the terms and conditions stated in the Agreement. This Note is secured by, among other things, a Mortgage, Security Agreement and Fixture Filing.

The occurrence of an Event of Default under the Agreement is a default under this Note as if such Events of Default were fully stated on the face of this Note.

EXHIBIT

tabbles
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AB002409

The Borrower shall make each payment under this Note not later than 11:00 a.m. Mountain time on the date when due in lawful money of the United States to the Lender in immediately available funds and at the Lender's office in Bozeman, Montana. Whenever any payment to be made under this Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and the extension of time shall in such case be included in the computation of the payment of interest. Payments received by Lender after 11:00 a.m. Mountain time shall be deemed received for all purposes on the next Business Day.

This Note shall be governed by the laws of the state of Montana.

Borrower waives demand, presentment for payment, diligence in collection, notice of nonpayment and protest.


In the event of any suit or other proceeding for the interpretation or enforcement of this Note, the prevailing party in such suit or other legal proceeding shall be entitled to recover its costs and expenses incurred, including, without limitation, reasonable attorneys' fees.

Time is of the essence of this Note.

Borrower agrees to execute such further documents and instruments and take such further actions as may be reasonably necessary or convenient to effectuate the intention of this Note.

[Remainder of page blank. Signature page follows.]

BRN DEVELOPMENT, INC.

By: 
Marshall R. Chesrown, President



5889 South Greenwood Plaza Boulevard, #404
Greenwood Village, CO 80111
303.708.0011 Tel
303.741.2111 Fax

September 25, 2009

Mr. Bryan Klein
President
American Bank of Montana
1632 West Main Street
Bozeman, Montana 59711-1970

Re: Appraisal of Real Property
In a Summary Report

Black Rock North
Loffs Bay Road
Unincorporated Kootenai County, Idaho

Dear Mr. Klein:

In fulfillment of our agreement as outlined in the Letter of Engagement, I am pleased to transmit our appraisal report on the property referenced above. The property was inspected by and the report was prepared by Dean R. Paauw, MAI. The value opinion reported below is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the report. We particularly call your attention to the extraordinary assumptions in this report.

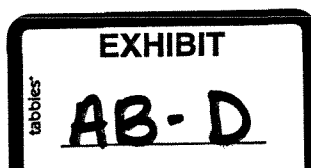
This report was prepared for American Bank of Montana, its successors, participants and assigns, and is intended for their specified use. The intended use is for foreclosure purposes. This appraisal report has been prepared in accordance with our interpretation of your institutional guidelines, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the Uniform Standards of Professional Appraisal Practice (USAP), including the Competency Provision.

Black Rock North is a 983.26-acre tract of land with rolling hills, featuring open and forested areas. The property is approved for development through a Planned Unit Development (PUD). Existing improvements consist of an 18-hole Tom Weiskopf-designed championship golf course, a 23,656 square foot maintenance facility, a 5,994 square foot kid's camp (Kootenai Cabin), various amenities, graded roads, and a basalt pit. The project is located in unincorporated Kootenai County, Idaho, 18 miles south of the resort community of Coeur d'Alene and near Lake Coeur d'Alene.

Based on our Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the As Is market value of the Fee Simple estate of the proposed 983.26-acre Black Rock North project, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, on September 9, 2009, is:

As Is Market Value
FIFTEEN MILLION DOLLARS
\$15,000,000

MASTERS VALUATION SERVICES



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AB004721

Mr. Bryan Klein
American Bank
September 25, 2009
Page 2

The property has approximately \$60,000 in unpaid 2008 taxes. This is considered to be within rounding of the subject's market value.

A sale of the subject property at the above-stated opinion of market value would have required an exposure time of approximately twelve (12) months. Furthermore, a marketing period of approximately twelve (12) months is currently warranted for the subject properties.

Extraordinary Assumptions

An extraordinary assumption is defined by the *Uniform Standards of Professional Appraisal Practice* (2002 Edition, The Appraisal Foundation, page 3) as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

1. The subject golf maintenance facility currently also serves the adjoining Club at Black Rock golf course. It is a special assumption of this appraisal that the subject and the Club at Black Rock can share the maintenance facility and expenses in order to benefit both projects.
2. It is assumed that the subject will have access to the Black Rock Utility system and has sufficient capacity to serve the proposed development and golf course.

There are no hypothetical conditions.

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and Addenda.

Respectfully submitted,



Dean R. Paauw, MAI
Masters Valuation Services
Idaho Temporary Certified General Appraiser
License No. TCGA-2765
dean@mastersvaluation.com
303-708-0011 Tel
303-741-2111 Fax

MASTERS VALUATION SERVICES

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AB004722



5889 South Greenwood Plaza Boulevard, #404
Greenwood Village, CO 80111
303.708.0011 Tel
303.741.2111 Fax

October 29, 2010

Mr. Bryan Klein
President
American Bank of Montana
1632 West Main Street
Bozeman, Montana 59771-1970

Re: Appraisal of Real Property
In a Summary Report

Black Rock North
Loffs Bay Road
Unincorporated Kootenai County, Idaho

Dear Mr. Klein:

In fulfillment of our agreement as outlined in the Letter of Engagement, I am pleased to transmit our appraisal report on the property referenced above. The property was inspected by and the report was prepared by Dean R. Paauw, MAI. The value opinion reported below is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the report. We particularly call your attention to the extraordinary assumptions in this report.

This report was prepared for American Bank of Montana, its successors, participants and assigns, and is intended for their specified use. The intended use is for foreclosure purposes. This appraisal report has been prepared in accordance with our interpretation of your institutional guidelines, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the Uniform Standards of Professional Appraisal Practice (USAP), including the Competency Provision.

Black Rock North is a 968.5-acre tract of land with rolling hills featuring open and forested areas. The property is approved for development through a Planned Unit Development (PUD). Existing improvements consist of an 18-hole Tom Weiskopf-designed championship golf course, a 23,656 square foot maintenance facility, a 5,994 square foot kid's camp (Kootenai Cabin) with outdoor amenities, graded roads, and a basalt pit. The project is located along Loffs Bay Road in unincorporated Kootenai County, Idaho, 18 miles south of the resort community of Coeur d'Alene and near Lake Coeur d'Alene. The property has been under receivership this past year and remains in the foreclosure process. The property is being adequately maintained but is not operating.

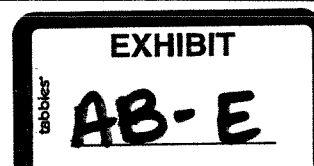
Based on our Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the As Is market value of the Fee Simple estate of the 968.5-acre Black Rock North project, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, on October 19, 2010, is:

As Is Market Value

TWELVE MILLION DOLLARS

\$12,000,000

MASTERS VALUATION SERVICES



2008

AB004910

Mr. Bryan Klein
American Bank
October 29, 2010
Page 2

A sale of the subject property at the above-stated opinion of market value would have required an exposure time of approximately twelve (12) months. Furthermore, a marketing period of approximately twelve (12) months is currently warranted for the subject properties.

Extraordinary Assumptions

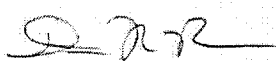
An extraordinary assumption is defined by the *Uniform Standards of Professional Appraisal Practice* (2002 Edition, The Appraisal Foundation, page 3) as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

1. The subject golf maintenance facility currently also serves the adjoining Club at Black Rock golf course. It is a special assumption of this appraisal that the subject and the Club at Black Rock can share the maintenance facility and expenses in order to benefit both projects.
2. It is assumed that the subject will have access to the Black Rock utility system and has sufficient capacity to serve the proposed development and golf course.

There are no hypothetical conditions.

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and Addenda.

Respectfully submitted,



Dean R. Paauw, MAI
Masters Valuation Services
Idaho Temporary Certified General Appraiser
License No. TCGA-3006

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 AUG 24 AM 10:34

CLERK DISTRICT COURT

Debra J. [Signature]
DEPUTY

Steven C. Wetzel, ISB #2988
Kenneth Huitt, ISB# 8257
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Attorneys for Defendant ACI NORTHWEST, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a

Case No. CV09-2619

ACI NORTHWEST, INC.'S AMENDED
ANSWER TO TAYLOR
ENGINEERING, INC.'S THIRD
PARTY COMPLAINT, AND
DEFENDANT ACI NORTHWEST
INC.'S AMENDED CROSS-CLAIMS
AND DEMAND FOR JURY TRIAL

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD
PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND
DEMAND FOR JURY TRIAL - 1

Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a
Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho
corporation; STRATA, INC., an Idaho
corporation; and SUNDANCE
INVESTMENTS, LLP, an Idaho limited
liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho
corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking
corporation, BRN DEVELOPMENT, INC.,
an Idaho corporation, BRN
INVESTMENTS, LLC, an Idaho limited
liability company, LAKE VIEW AG, a
Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho
general partnership, ROBERT LEVIN,
Trustee for the ROLAND M. CASATI
FAMILY TRUST, dated June 5, 2008,

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD
PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND
DEMAND FOR JURY TRIAL - 2

RYKER YOUNG, Trustee for the RYKER
YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

COMES NOW Third-Party Defendant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, James, Vernon & Weeks P.A., and in answer to TAYLOR ENGINEERING, INC.'s ("TAYLOR ENGINEERING") Third Party Complaint alleges as follows:

AMENDED ANSWER

All allegations contained in TAYLOR ENGINEERING's Counterclaim and Cross-Claim which relate to the claims of TAYLOR ENGINEERING were resolved by negotiated settlement. A stipulation to dismiss the TAYLOR ENGINEERING's third party complaint against ACI was fully executed and filed with the court on March 11, 2011. This court dismissed TAYLOR ENGINEERING's third party complaint against ACI with prejudice on July 5, 2011.

AMENDED CROSS-CLAIM

COMES NOW Cross-Claimant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, James, Vernon & Weeks P.A., and cross-complains and alleges as follows:

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 3

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PARTIES

1. Cross-Claimant ACI is and has at all times relevant herein been an Idaho corporation, in good standing, doing business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815.

2. Cross-Defendant BRN DEVELOPMENT, INC. (hereinafter referred to as "BRN"), an Idaho corporation, is and has at all times relevant herein been an Idaho corporation, transacting business in Kootenai County, Idaho, with a mailing address of P.O. Box 3070, Coeur d'Alene, Idaho 83816.

3. Cross-Defendant AMERICAN BANK, a Montana banking corporation, (hereinafter referred to as "AMERICAN BANK"), has its primary place of business in Bozeman, Montana, and claims a security interest in the property described on **Exhibit "A"** attached hereto which is the subject property in this law suit (hereinafter referred to as "Subject Property"). AMERICAN BANK is the plaintiff in this law suit and is attempting to foreclose on the subject property. AMERICAN BANK claims a lien which has superior priority over the lien of ACI.

4. Defendants BRN INVESTMENTS, LLC, an Idaho limited liability company (hereinafter referred to as "BRN"), LAKE VIEW AG, a Liechtenstein company, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, THORCO, INC., an Idaho corporation, CONSOLIDATED SUPPLY COMPANY, an Oregon corporation, THE TURF CORPORATION, an Idaho corporation, WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation (hereinafter referred to as "WADSWORTH GOLF"), POLIN & YOUNG CONSTRUCTION, INC., an Idaho corporation, TAYLOR ENGINEERING, INC., a Washington corporation, and PRECISION IRRIGATION,

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 4

INC., an Arizona corporation, all claim an interest in the Improved Property. ACI, upon information and belief, presumes that all the interest of the defendants in the subject property may be resolved with none claiming a priority superior to ACI, or in the alternative, that the priority is irrelevant due to the posting of bond to pay ACI for sums secured by a lien, including attorney's fees and interest.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the parties and the subject matter pursuant to Idaho Code §§ 1-705, 5-514(a), 5-514 (c), 45-516, 45-1302, 10- 1201 and other state law. Venue is proper pursuant to Idaho Code §§ 5-401 and 5-404 and because all parties have submitted to the jurisdiction of this Court through their respective appearances.

COUNT I DECLARATORY ACTION AGAINST AMERICAN BANK AND BRN

6. An actual or judicable controversy has arisen and now exists between ACI, AMERICAN BANK and BRN concerning their respective rights, status, legal relationship and interests in the Subject Property and the rights and the obligations of the parties between certain documents and agreements executed by ACI, BRN or both ACI and BRN. The real and substantial controversy surrounds the right of ACI to be paid for services and material expended to improve the Subject Property.

7. This action for a declaratory judgment is authorized under the Idaho Uniform Declaratory Judgments Act, Idaho Code 10-1203 et seq.

8. This action for declaratory judgment is invoked for remedial and/or preventive relief for the purpose of resolving uncertainty and insecurity in regard to the following issues that are ripe for resolution for the benefit of the parties:

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 5

8.1. Is a subordination valid if contained in a lien release and no consideration was given by the benefitted party for the subordination?

8.2. Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?

9. **Is a subordination valid if contained in a lien release and no consideration was given by the benefitted party for the subordination?**

9.1. BRN prepared what has been referred to as a "golden release," an example copy of which is attached hereto as **Exhibit "B"** and incorporated by this reference (hereinafter referred to as "Golden Release").

9.2 ACI officers did sign a Golden Release on several occasions as a condition to receiving earned payment for the services rendered and materials already expended on the Subject Property as of the date of signature, excluding the retainage that was retained by BRN. On no occasion was ACI paid any consideration for any subordination, nor was the subordination discussed or pointed out to ACI by BRN.

10. **Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?**

10.1 The ACI officers that did sign the Golden Release did not understand and were not informed that any portion of the release might be claimed to protect the mortgage lender, AMERICAN BANK, and to be a legal basis for subordinating

the prior lien rights of ACI to the subsequently recorded mortgage of the lender AMERICAN BANK.

10.2 AMERICAN BANK claims ACI's lien is not superior to AMERICAN BANK Mortgage because of a subordination clause which existed in a document in which AMERICAN BANK was not a party or a third party beneficiary to the document.

COUNT 2
BREACH OF EXPRESS OR IMPLIED CONTRACT BY BRN

11. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

12. ACI and BRN entered into express and implied contracts from 2006-2009 (hereinafter collectively referred to as the "Contracts"), all related to Black Rock North Golf Community. Pursuant to the Contracts, ACI performed labor, design assistance, construction management, supplied equipment and furnished materials for various construction work, including but not limited to the construction of streets, changes in landscape profiles, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the Subject Property.

13. The Contracts constitute valid and legally enforceable contracts under Idaho law.

14. BRN has breached the Contracts by not paying ACI for the work ACI performed pursuant to the Contracts. The amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The amount of interest currently due and owing pursuant to Idaho law is \$407,409.72 as of August 1, 2011.

15. As a direct and proximate result of BRN's breach of contracts, ACI is owed at least \$1,501,590.50, plus and attorney fees and costs. The total amount of damages, including but not limited to the total interest due on said amount at the highest rate allowed by the Contracts and Idaho law, shall be proven at trial.

COUNT 3
RIGHT TO COLLECT ON THE MECHANIC'S LIEN BOND

16. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

17. ACI, as a registered Idaho contractor, performed labor, supplied equipment and furnished materials for various construction work, including but not limited to construction design, construction management and physical construction of streets, golf course, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the Improved Property. The first materials were delivered to the project on August 22, 2006. The first labor on the job commenced on August 26, 2006. The major work was commenced on October 1, 2006, which has continued in various degrees of performance until March 30, 2009, at the express and implied request of BRN and with the full knowledge of BRN and AMERICAN BANK.

18. As of June 15, 2009, the amount due and owing to ACI from BRN for labor performed, equipment supplied and materials furnished was \$1,499,827.63, which included various labor and material, excluding interest owed pursuant to the terms of the Contracts. As a result, on that same date, ACI recorded a Claim of Lien against the Improved Property for the principal amount due and owing, interest thereon and costs and attorney's fees pursuant to Idaho Code 45-513.

19. BRN later made a partial payment on account on December 9, 2009, for which ACI recorded an Endorsement to Claim of Lien for Payment on Account.

20. Pursuant to the Contracts, the amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The August 1, 2011, accruing at \$493.67 per day. Pursuant to the contract and state law, ACI is also owed attorney's fees and court costs.

21. ACI recorded a claim of lien on the Subject Property. The claim of lien is attached hereto and incorporated herein as **Exhibit "C."** The claim of lien was extended by an "Endorsement to Claim of Lien for Payment on Account," a copy of which is attached hereto and incorporated herein as **Exhibit "D."** ACI's lien was entitled to foreclosure, priority and/or a determination of the title, estate or interest of all parties hereto pursuant to Idaho Code §§ 45-506, 45-507, 45-510, 45-512 and 45-1302; however, AMERICAN BANK and ACI stipulated to release the lien of ACI. An Order releasing the ACI lien was entered on July 27, 2010, and a "Release of Mechanic's Lien Bond" from International Fidelity Insurance Company was posted. International Fidelity Insurance Company is obligated to pay ACI such amounts as this Court may adjudge to have be owing with interest, cost, and attorney's fees. A copy of the bond is attached hereto and incorporated herein as **Exhibit "E."** Due to the posting of the bond, no priority is relevant, but if deemed to be relevant, then ACI's lien priority would be superior to AMERICAN BANK.

COUNT 4

AMERICAN BANK AND/OR ITS SUCCESSORS SHOULD NOT BE ALLOWED TO RETAIN ILL-GOTTEN GAINS, IF SUCH GAINS EXIST (unjust enrichment, quantum meruit, waiver, and/or equitable estoppel)

22. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

23. On or about 2005 and 2006, BRN commenced a plan to develop real property located in Kootenai County, Idaho, the Improved Property.

24. BRN entered into negotiations with ACI for substantial contracting related to a golf course community patterned after the successful Black Rock Golf Community.

25. BRN was to pay to ACI millions of dollars for substantial improvement to create a new golf course community, "Black Rock North Golf Community," on the Improved Property. AMERICAN BANK agreed to finance the construction of the project. AMERICAN BANK's records show that AMERICAN BANK knew that ACI was working on the project and was willing to do infrastructure work for Black Rock North Golf Community. AMERICAN BANK's records show that AMERICAN BANK reserved the right to approve all contractors on the Black Rock North Golf Community project. AMERICAN BANK knew of ACI's valid economic expectancy to be paid for the work completed on the Black Rock North Golf Community project.

26. On information and belief, ACI believes that AMERICAN BANK has negotiated deals with third parties to the project to allow a third party to buy an interest in the note and mortgage which allow the third party to benefit from ACI's materials and labors that added to the value of the subject golf course community.

27. On information and belief, ACI believes that AMERICAN BANK has negotiated deals with other investors in the subject golf course community to allow investors to benefit from ACI's materials and labors that added to the value of the subject golf course community without paying for the enrichment.

28. On information and belief, ACI believes that AMERICAN BANK may have taken actions which appear to be unjust, inappropriate and probable violation of banking standards and/or regulations, including but not limited to:

- 28.1 Reckless disregard in communication as to construction funding;
- 28.2 Improper loan practices;
- 28.3 Insufficient ability to loan sums for a golf course community;
- 28.4 Improper appraisal orders and controls; and
- 28.5 Other incidents of unclean hands.

29. Even if there were no express or implied contracts between ACI and BRN and AMERICAN BANK and AMERICAN BANK's joint ventures, partners, or investors as is alleged in COUNT I above, ACI has provided a benefit to BRN in the form of ACI's various construction materials and labor, which BRN has accepted and which AMERICAN BANK's joint ventures, partners, or investors attempt to gain without full payment.

30. If under these circumstances any unjust enrichment exists, then such sums should be disgorged.

WHEREFORE, ACI prays for judgment as follows:

As to the Declaratory Judgment Count:

1. For a declaration of the Court as to the Rights and the Parties in Regard to the Following:

- 1.1 Is a subordination valid if contained in a lien release and no consideration was paid for the subordination?
- 1.2 Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?

**As To Contractual Relief And The Statutory Relief Under The Idaho Lien Statute
In Accordance With The Bond Posted To Release The Lien:**

1. For judgment in favor of ACI declaring that the lien recorded by ACI against the Subject Property and as extended through partial payment by BRN and recorded endorsement is valid and has fulfilled all statutory requirements.
2. For judgment declaring that the sum, as proven in trial, is owed by the lien claimant's debtor to have been secured by the Subject Lien along with interest (highest rate allowed by Idaho law), and reasonable cost and attorney fees as determined by this court.
3. For any other relief that the Court deems just and proper.

In The Alternative Or In Addition To The Contractual Relief And The Statutory Remedies That AMERICAN BANK And Its Successors And/Or Joint Venturers Should Be Disgorged Of Any Unjust Enrichment In Taking Of The Subject Golf Course Community With The ACI Improvements If Such Enrichment Exists:

1. For the entry of judgment in favor of ACI and against AMERICAN BANK and its successors in interest in amount as this court may adjudge to be adequate to avoid any unjust enrichment if such exists.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves and Idaho law, including but not limited to Idaho Code §§ 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e).
3. For any other relief that the Court deems just and proper.

DATED this 24th day of August, 2011.

JAMES, VERNON & WEEKS, PA

By: 

Steven C. Wetzel

Attorneys for ACI NORTHWEST, INC.

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 12

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on the 24th day of August, 2011, I served the foregoing document upon:

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Nancy L. Isserlis
<input type="checkbox"/>	Hand Delivered	Elizabeth A. Tellessen
<input type="checkbox"/>	Overnight Mail	Winston & Cashatt
<input checked="" type="checkbox"/>	Facsimile: 509-838-1416	250 Northwest Blvd., Suite 107A
<input checked="" type="checkbox"/>	<u>ik@winstoncashatt.com</u>	Coeur d'Alene, ID 83814
<input checked="" type="checkbox"/>	<u>nisserlis@winstoncashatt.com</u>	
<input checked="" type="checkbox"/>	<u>etellessen@winstoncashatt.com</u>	<i>Attorneys for American Bank</i>

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Randall A. Peterman
<input type="checkbox"/>	Hand Delivered	C. Clayton Gill
<input type="checkbox"/>	Overnight Mail	Moffatt Thomas Barrett Rock &
<input checked="" type="checkbox"/>	Facsimile: 208-385-5384	Fields, Chtd.
<input checked="" type="checkbox"/>	<u>rap@moffatt.com</u>	101 South Capitol Blvd., 10 th Floor
		P.O. Box 829
		Boise, ID 83701-0829

Attorneys for American Bank

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Charles B. Lempesis
<input type="checkbox"/>	Hand Delivered	Attorney at Law
<input type="checkbox"/>	Overnight Mail	201 West Seventh Avenue
<input checked="" type="checkbox"/>	Facsimile: 208-773-1044	Post Falls, ID 83854

Attorneys for Thorco, Inc.

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Edward J. Anson
<input type="checkbox"/>	Hand Delivered	Witherspoon Kelley Davenport &
<input type="checkbox"/>	Overnight Mail	Toole
<input checked="" type="checkbox"/>	Facsimile: 208-667-8470	608 Northwest Blvd., Suite 300
		Coeur d'Alene, ID 83814-2146

*Attorneys for The Turf Corporation,
Wadsworth Golf Construction
Company and Precision Irrigation,
Inc.*

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*Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
BRN-Lake View Joint Venture, The
Roland M. Casati Family Trust, Dated
June 5, 2008*

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____ Hand Delivered
____ Overnight Mail
✗ Facsimile: 208-664-5884
✗ firm@ramsdenlyons.com

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*Attorneys for Ryker Young Revocable
Trust*

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____ Overnight Mail
✗ maggie.y.lyons@gmail.com

Maggie Y. Lyons, Receiver
RESOLVE FINANCIAL GROUP
P.O. Box 598
Hayden, ID 83835

X

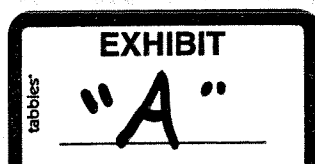
U.S. Mail, Postage Prepaid
Hand Delivered
Overnight Mail
Facsimile: 208-664-5884

Terrance R. Harris
Ramsden & Lyons, LLP\
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P.O. Box 1336
Coeur d'Alene, ID 83816-1336

Attorneys for Receiver


Deborah Hylton

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285

EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-17833.2
Version 3
UPDATE

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING

COMPUTED



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Order No. 6001-17833.2
Version 3
UPDATE

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

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EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

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EXHIBIT "A"
LEGAL DESCRIPTION

THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

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TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

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UPDATE

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

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EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE
NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE
MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E"
OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID
COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE
NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

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NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF
SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF
BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4,
SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF
THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND
BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE
NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00
DEGREES 46' 41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS
4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115
BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2
COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44' 36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31' 30" WEST, A DISTANCE OF 210.09 FEET TO THE
INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4,
SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87
DEGREES 13' 28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT
LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

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EXHIBIT "A"
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFF'S BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

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LEGAL DESCRIPTION

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE
INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE
NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF
BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE
NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF
BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE,
65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFFS BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY
LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF
BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE FLAT OF MCLEAN MEADOWS RECORDED
IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE
SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

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EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SE 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

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EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD,

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

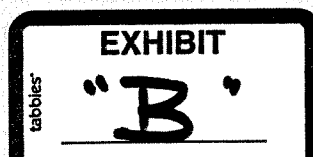
BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS;

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.



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EXHIBIT "B"
CONDITIONAL LIEN WAIVER, RELEASE AND SUBORDINATION

Payment Amount: \$.0
 For Work Through: , 200

TO: BRN Development, Inc.
 P.O. Box 3070
 Coeur d' Alene, ID 83816

RE: CONTRACT #065035_C0007

Upon receipt of payment of the sum of \$ 18,251.97, the undersigned waives any and all right to any lien whatever and releases all rights to lien or claim any lien against the real property associated with the above Project by the undersigned in connection with any and all work or labor performed, materials, equipment, goods, or things supplied or furnished, or any other claims or obligations owed through the date shown above, on the above-named Project.

This waiver and release does not cover rights or obligations that might accrue after the above date for additional work that may be performed. In addition, upon receipt of the payment stated above, the undersigned agrees that any lien that may be filed for work performed after said date will only have lien priority from and after the date stated above and will be subordinate to any liens or encumbrances attaching to the subject property prior to said date.

As an inducement to the above-named Owner to make the payment first described above, the undersigned further covenants and represents that it has performed the work and/or furnished the materials pursuant to and in accordance with the plans and specifications or work order in effect up through 3-25, 2008. The undersigned further covenants and represents that either all obligations related to labor, equipment, supplies, materials, lower tier subcontractors at all levels and consultants through the date first stated above have been fully paid, or all such obligations will be paid first out of the funds to be received before any of said funds will be applied to any other purpose and the payment first described above will be sufficient to fully satisfy all such obligations.

If signed on behalf of a company, the undersigned certifies under penalty of perjury under the laws of the State of Idaho that he or she is authorized to execute the same on behalf of the company to be bound.

COMPANY: ACI Northwest Inc.
 By: Delores Fletcher
 Its: Corp. Secretary

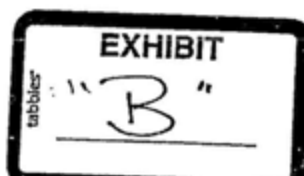
STATE of Idaho)
 County of Kootenai) ss.

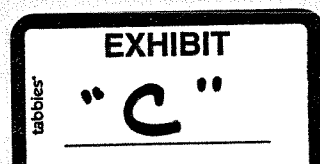
On this 24th day of March, 2008, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Delores Fletcher, known or identified to me to be the Corp. Secretary of _____, the corporation that executed the foregoing instrument and acknowledged the said instrument to be a free and voluntary act and deed of the corporation, for the uses and purposes set forth therein, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



S. Vanderlinden
 Notary Public in and for the State of Idaho
 Residing at: Bozeman
 My Commission Expires: 3/12/13





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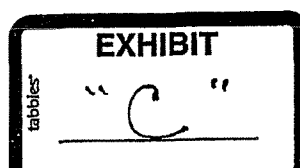
DANIEL J. ENGLISH JEP I 2216696000
KOOTENAI CO. RECORDER Page 1 of 18
BBB Date 06/15/2009 Time 11:51:54
REC-REQ OF ACI NORTHWEST INC
RECORDING FEE: 48.00
2216696000 XN 10

CLAIM OF LIEN

1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63. *see attached* Exhibit "B".
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached* Exhibit "B".
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

CLAIM OF LIEN

1

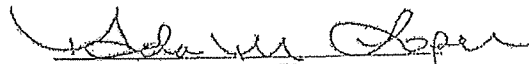


STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien, I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

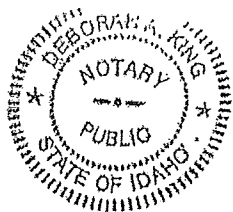
ACI Northwest, Inc.

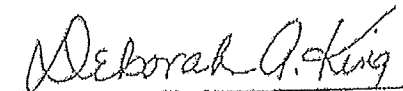

Ada Loper, Secretary/Treasurer

STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.




Notary for the State of Idaho
Commission Expires: 7/21/09

CLAIM OF LIEN

Order No. 6001-17833.2

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELDON, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 623.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

Order No. 6001-17833.2

EXHIBIT "A"
LEGAL DESCRIPTION

TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

Order No. 6001-17833.2

EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE
NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE
MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E"
OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID
COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE

NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

EXHIBIT "A"
LEGAL DESCRIPTION

NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46' 41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

1) NORTH 50 DEGREES 44' 36" WEST, A DISTANCE OF 73.10 FEET;

2) THENCE NORTH 60 DEGREES 31' 30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13' 28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

EXHIBIT 'A'
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFF'S BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE
INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE
NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF
BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE
NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF
BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE,
65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFTS BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY
LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF
BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE FLAT OF MCLEAN MEADOWS RECORDED
IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE
SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SE 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

ACI NORTHWEST, INC.
SCHEDULE OF CURRENT AMOUNTS DUE FROM BLACK ROCK ENTITIES

<u>Due Date</u>	<u>Contract</u>	<u>Invoice</u>	<u>Amount</u>	<u>Interest at 12% Accrued to 05/31</u>	
9/10/2008	8104	6169	52,155.00	4,509.62	Blackrock Offsite Sewer
10/10/2008	8101	6322	206,016.63	15,781.44	Panhandle Modifications
10/10/2008	8970	6312	7,135.36	546.59	Cart Path Work-Hole 5&6
10/10/2008	8187	6367	6,573.65	503.56	New Clubhouse Site 06-5040
10/10/2008	8186	6366	4,270.89	327.16	BRN Erosion Control 06-5035
11/10/2008	8101	6446	20,901.75	1,392.09	Panhandle Modifications
11/10/2008	8027	6452	19,670.00	1,299.66	BRN Winter Work
11/10/2008	8974	6448	1,462.73	97.14	Kootenai Camp 06-5038
11/10/2008	8187	6451	13,922.92	924.63	New Clubhouse Site 06-5040
11/10/2008	8964	6487	1,036.93	68.86	BRN Golf Course 06-5040
11/10/2008	8186	6450	14,588.30	967.49	BRN Erosion Control 06-5035
11/10/2008	8097	6436	837.99	55.65	BR Comfort Station-Retention
11/10/2008	8058	6436	2,312.00	153.54	BR House Demo-Retention
12/10/2008	8101	6608	18,355.89	1,037.98	Panhandle Modifications
12/10/2008	8101	6677	49,644.78	2,801.66	Panhandle Retention
12/10/2008	8964	6628	3,045.90	172.24	BRN Golf Course 06-5040
12/10/2008	8186	6652	3,742.46	211.63	BRN Erosion Control 06-5035
12/10/2008	8503	6646	4,240.00	239.76	BRN Conduit @ New Entrance
12/10/2008	8097	6661	1,178.95	66.67	BRN Comfort Stations
12/10/2008	8027	6676	16,110.84	911.02	BRN Winter work plus retention
12/10/2008	8104	6678	7,032.49	397.67	BRN Offsite sewer retention
			454,075.06	32,466.08	
Bonus Per Contract for Cost Savings			1,045,752.57		
			1,499,827.63	32,466.08	
Per Diem Interest				499.09	

Exhibit B



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DANIEL J. ENGLISH 4P I 2244689000
KOOTENAI CO. RECORDER Page 1 of 4
AAA Date 12/10/2009 Time 12:46:39
REC-REQ OF ACI NORTHWEST INC
RECORDING FEE: 12.00
2244689000 XN

**ENDORSEMENT TO CLAIM OF LIEN
FOR PAYMENT ON ACCOUNT**

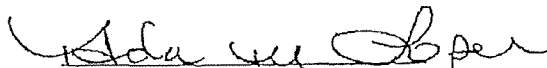
1. The name of the claimant is ACI Northwest, Inc., having its principal place of business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815 (hereinafter "Claimant").
2. The name of the owner of the real property and improvements thereon against which the lien referred to herein is claimed (hereinafter "Property") is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant previously recorded a Claim of Lien as Instrument No. 2216696000, Records of Kootenai County, Idaho, against the Property. A copy of said Claim of Lien is attached hereto as Exhibit "A".
4. The Claimant received a payment on account from Owner on December 9, 2009. Therefore, pursuant to Idaho Code Section 45-510, the binding effect of the Claim of Lien shall run for six (6) months after that date.
5. This Endorsement and the underlying payment on account shall not affect Owner's rights to challenge the validity of the Claim of Lien referred to herein.

STATE OF IDAHO)
) ss
County of Kootenai)

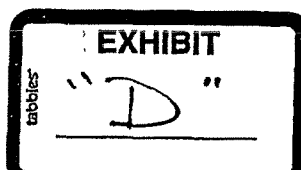
Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the Claim of Lien referenced above. I am competent to testify as to all matters contained in this Endorsement to Claim of Lien for Payment on Account. I have read the foregoing Endorsement to Claim of Lien for Payment on Account, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

ACI Northwest, Inc.


Ada Loper, Secretary/Treasurer

ENDORSEMENT TO
CLAIM OF LIEN FOR
PAYMENT ON ACCOUNT

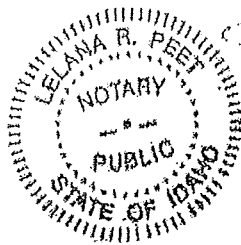


314

STATE OF IDAHO)
):ss
County of Kootenai)

On this 10th day of December, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.



Lelana R. Peet
Notary for the State of Idaho
Commission Expires: 4/5/10

ENDORSEMENT TO
CLAIM OF LIEN FOR
PAYMENT ON ACCOUNT

COPY

DANIEL J. ENGLISH ISP I 2216598000
KOOTENAI CO. RECORDER Page 1 of 15
BBB Date 08/15/2009 Time 11:51:54
REC-HQ OF DOI NORTHWEST INC
RECORDING FEE: 45.00
2216598000 XN 16

CLAIM OF LIEN

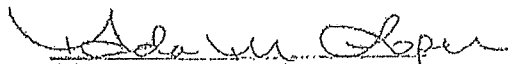
1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63. *see attached* Exhibit "B".
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached* Exhibit "B".
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien. I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

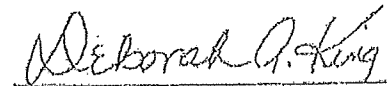
ACI Northwest, Inc.

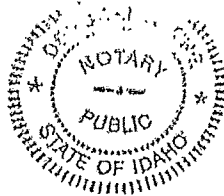

Ada Loper, Secretary/Treasurer

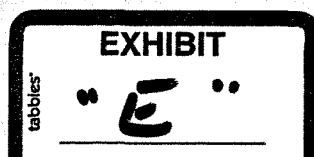
STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.


Notary for the State of Idaho
Commission Expires: 7/21/09





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International Fidelity Insurance Company
1575 Treat Blvd., Suite 208
Walnut Creek, CA 94596

Release of Mechanic's Lien Bond

Bond No: 0525631
Premium: \$20,250.00

WHEREAS, American Bank, desires to give a bond for releasing the following described real property from that certain claim of mechanic's lien in the sum of \$2,250,000.00, recorded June 15, 2009, in the office of the recorder in Kootenai County, Idaho:

See **Exhibit A** for Legal Description

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to ACI Northwest, Inc., the claimant named in the mechanic's lien, under the conditions prescribed by sections 45-518 through 45-524, Idaho Code, inclusive, in the sum of Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00), from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest, costs and attorney's fees. A true and correct copy of the Endorsement to Notice of Claim of Lien and Notice of Lien are attached hereto as Exhibit B.

IN WITNESS WHEREOF, the principal and surety have executed this bond at Los Angeles, California, on the 15th day of July, 2010.

American Bank

By Fidelity National Title Group, Inc.
Its Regional Senior Claims Attorney

International Fidelity Insurance Company

By Brenda Wong
Brenda Wong, Attorney-in-Fact

State of Idaho Nebraska
) ss.

County of Douglas

On July 16, 2010, before me, the undersigned, a notary public of this county and state, personally appeared Mark Dierker, who acknowledged that he/she executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared personally known (or satisfactorily proved) to me to be the attorney in fact of the corporation that executed the foregoing instrument and known to me to be the person who executed that instrument on behalf of the corporation therein named, and he/she acknowledged to me that that corporation executed the foregoing instrument.

****SEE ATTACHED SURETY ALL PURPOSE ACKNOWLEDGMENT****

Jerry Butler
Notary Public in and for the Surety



EXHIBIT

"E"

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On JUL 15 2010 before me, Simone Gerhard, Notary Public,
personally appeared Brenda Wong who proved to me
on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

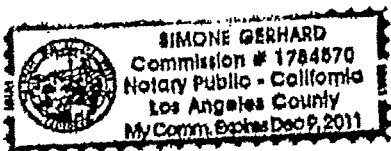
I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature

Simone Gerhard



BROADCAST REPORT

TIME : 08/18/2011 14:18
NAME : JAMES VERN
FAX : 2086646741
TEL : 2086670683
SER.# : BROH0J191874

PAGE(S)

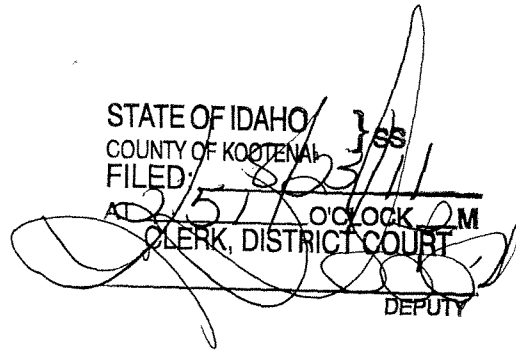
58

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
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08/18	13:48	6678470	08:31	58	OK	ECM
08/18	14:03	6645884	15:21	58	OK	ECM

BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
CV : COVERPAGE

ACT / ORN
Sweetze

Steven C. Wetzel, ISB #2988
Kenneth Huitt, ISB# 8257
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
swetzel@jvwlaw.net
khuitt@jvwlaw.net



Attorneys for Defendant ACI NORTHWEST, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho

Case No. CV09-2619

ORDER GRANTING LEAVE TO
AMEND ANSWER AND CROSS-
CLAIM

corporation, TAYLOR ENGINEERING, INC., a Washington corporation, PRECISION IRRIGATION, INC., an Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation; STRATA, INC., an Idaho corporation; and SUNDANCE INVESTMENTS, LLP, an Idaho limited liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking corporation, BRN DEVELOPMENT, INC., an Idaho corporation, BRN INVESTMENTS, LLC, an Idaho limited liability company, LAKE VIEW AG, a Liechtenstein company, BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, MARSHALL CHESROWN, a single man,

THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

This matter having come before the Court on ACI NORTHWEST, INC.'s (hereinafter "ACI"), Motion for Leave to Amend Answer and Cross-Claim, oral argument having been heard on August 3, 2011, and this Court being fully advised in the premises,

NOW THEREFORE,

IT IS HEREBY ORDERED that ACI may amend its Answer to Taylor Engineering, Inc.'s Third Party Complaint and amend its Cross-Claim in the form attached to this Order. The attached form is the same as the document previously filed with the Motion for Leave to Amend with one clerical error corrected. The final Count has been correctly numbered 4 instead of 5.

IT IS HEREBY FURTHER ORDERED THAT Defendants shall have 20 days to answer the amended cross-claim after it is filed.



Honorable John P. Luster
District Court Judge

Presented by:

Steven C. Wetzel, ISB # 2988
JAMES, VERNON & WEEKS, PA

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on the 23 day of August, 2011, I served the foregoing document upon:

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile: 208-664-1684

Steven C. Wetzel
Kenneth Huitt
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
Coeur d'Alene, Idaho 83814

Attorneys for ACI Northwest, Inc.

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile: 208-385-5384
rap@moffatt.com

Randall A. Peterman
C. Clayton Gill
Moffatt Thomas Barrett Rock &
Fields, Chtd.
101 South Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829

Attorneys for American Bank

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☒ Overnight Mail
☐ Facsimile: 208-773-1044

Charles B. Lempesis
Attorney at Law
201 West Seventh Avenue
Post Falls, ID 83854

Attorneys for Thorco, Inc.

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☒ Overnight Mail
☐ Facsimile: 208-667-8470

Edward J. Anson
Witherspoon Kelley Davenport &
Toole
608 Northwest Blvd., Suite 300
Coeur d'Alene, ID 83814-2146

*Attorneys for The Turf Corporation,
Wadsworth Golf Construction
Company and Precision Irrigation,
Inc.*

#646

U.S. Mail, Postage Prepaid
Hand Delivered
Overnight Mail
Facsimile: 509-455-7111
pmadrigal@campbell-bissell.com
rcampbell@cbklawyers.com

Richard D. Campbell
Campbell Bissell & Kirby, PLLC
416 Symons, Building 7
South Howard Street
Spokane, WA 99201-3816

*Attorneys for Polin & Young
Construction*

U.S. Mail, Postage Prepaid
Hand Delivered
Overnight Mail
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Roland M. Casati Family Trust, Dated
June 5, 2008*

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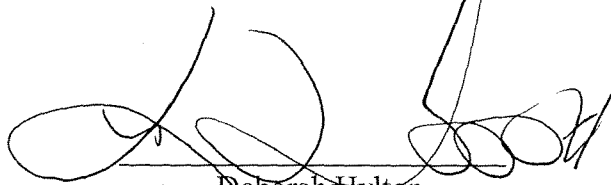
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Attorneys for Defendant ACI NORTHWEST, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a

Case No. CV09-2619

ACI NORTHWEST, INC.'S AMENDED
ANSWER TO TAYLOR
ENGINEERING, INC.'S THIRD
PARTY COMPLAINT, AND
DEFENDANT ACI NORTHWEST
INC.'S AMENDED CROSS-CLAIMS
AND DEMAND FOR JURY TRIAL

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD
PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND
DEMAND FOR JURY TRIAL - 1

Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a
Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho
corporation; STRATA, INC., an Idaho
corporation; and SUNDANCE
INVESTMENTS, LLP, an Idaho limited
liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho
corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking
corporation, BRN DEVELOPMENT, INC.,
an Idaho corporation, BRN
INVESTMENTS, LLC, an Idaho limited
liability company, LAKE VIEW AG, a
Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho
general partnership, ROBERT LEVIN,
Trustee for the ROLAND M. CASATI
FAMILY TRUST, dated June 5, 2008,

RYKER YOUNG, Trustee for the RYKER
YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

COMES NOW Third-Party Defendant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, James, Vernon & Weeks P.A., and in answer to TAYLOR ENGINEERING, INC.'s ("TAYLOR ENGINEERING") Third Party Complaint alleges as follows:

AMENDED ANSWER

All allegations contained in TAYLOR ENGINEERING's Counterclaim and Cross-Claim which relate to the claims of TAYLOR ENGINEERING were resolved by negotiated settlement. A stipulation to dismiss the TAYLOR ENGINEERING's third party complaint against ACI was fully executed and filed with the court on March 11, 2011. This court dismissed TAYLOR ENGINEERING's third party complaint against ACI with prejudice on July 5, 2011.

AMENDED CROSS-CLAIM

COMES NOW Cross-Claimant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, James, Vernon & Weeks P.A., and cross-complains and alleges as follows:

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 3

PARTIES

1. Cross-Claimant ACI is and has at all times relevant herein been an Idaho corporation, in good standing, doing business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815.

2. Cross-Defendant BRN DEVELOPMENT, INC. (hereinafter referred to as "BRN"), an Idaho corporation, is and has at all times relevant herein been an Idaho corporation, transacting business in Kootenai County, Idaho, with a mailing address of P.O. Box 3070, Coeur d'Alene, Idaho 83816.

3. Cross-Defendant AMERICAN BANK, a Montana banking corporation, (hereinafter referred to as "AMERICAN BANK"), has its primary place of business in Bozeman, Montana, and claims a security interest in the property described on **Exhibit "A"** attached hereto which is the subject property in this law suit (hereinafter referred to as "Subject Property"). AMERICAN BANK is the plaintiff in this law suit and is attempting to foreclose on the subject property. AMERICAN BANK claims a lien which has superior priority over the lien of ACI.

4. Defendants BRN INVESTMENTS, LLC, an Idaho limited liability company (hereinafter referred to as "BRN"), LAKE VIEW AG, a Liechtenstein company, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, THORCO, INC., an Idaho corporation, CONSOLIDATED SUPPLY COMPANY, an Oregon corporation, THE TURF CORPORATION, an Idaho corporation, WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation (hereinafter referred to as "WADSWORTH GOLF"), POLIN & YOUNG CONSTRUCTION, INC., an Idaho corporation, TAYLOR ENGINEERING, INC., a Washington corporation, and PRECISION IRRIGATION,

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 4

INC., an Arizona corporation, all claim an interest in the Improved Property. ACI, upon information and belief, presumes that all the interest of the defendants in the subject property may be resolved with none claiming a priority superior to ACI, or in the alternative, that the priority is irrelevant due to the posting of bond to pay ACI for sums secured by a lien, including attorney's fees and interest.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the parties and the subject matter pursuant to Idaho Code §§ 1-705, 5-514(a), 5-514 (c), 45-516, 45-1302, 10- 1201 and other state law. Venue is proper pursuant to Idaho Code §§ 5-401 and 5-404 and because all parties have submitted to the jurisdiction of this Court through their respective appearances.

COUNT I DECLARATORY ACTION AGAINST AMERICAN BANK AND BRN

6. An actual or judiciable controversy has arisen and now exists between ACI, AMERICAN BANK and BRN concerning their respective rights, status, legal relationship and interests in the Subject Property and the rights and the obligations of the parties between certain documents and agreements executed by ACI, BRN or both ACI and BRN. The real and substantial controversy surrounds the right of ACI to be paid for services and material expended to improve the Subject Property.

7. This action for a declaratory judgment is authorized under the Idaho Uniform Declaratory Judgments Act, Idaho Code 10-1203 et seq.

8. This action for declaratory judgment is invoked for remedial and/or preventive relief for the purpose of resolving uncertainty and insecurity in regard to the following issues that are ripe for resolution for the benefit of the parties:

8.1. Is a subordination valid if contained in a lien release and no consideration was given by the benefitted party for the subordination?

8.2. Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?

9. **Is a subordination valid if contained in a lien release and no consideration was given by the benefitted party for the subordination?**

9.1. BRN prepared what has been referred to as a "golden release," an example copy of which is attached hereto as **Exhibit "B"** and incorporated by this reference (hereinafter referred to as "Golden Release").

9.2 ACI officers did sign a Golden Release on several occasions as a condition to receiving earned payment for the services rendered and materials already expended on the Subject Property as of the date of signature, excluding the retainage that was retained by BRN. On no occasion was ACI paid any consideration for any subordination, nor was the subordination discussed or pointed out to ACI by BRN.

10. **Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?**

10.1 The ACI officers that did sign the Golden Release did not understand and were not informed that any portion of the release might be claimed to protect the mortgage lender, AMERICAN BANK, and to be a legal basis for subordinating

the prior lien rights of ACI to the subsequently recorded mortgage of the lender AMERICAN BANK.

10.2 AMERICAN BANK claims ACI's lien is not superior to AMERICAN BANK Mortgage because of a subordination clause which existed in a document in which AMERICAN BANK was not a party or a third party beneficiary to the document.

**COUNT 2
BREACH OF EXPRESS OR IMPLIED CONTRACT BY BRN**

11. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

12. ACI and BRN entered into express and implied contracts from 2006-2009 (hereinafter collectively referred to as the "Contracts"), all related to Black Rock North Golf Community. Pursuant to the Contracts, ACI performed labor, design assistance, construction management, supplied equipment and furnished materials for various construction work, including but not limited to the construction of streets, changes in landscape profiles, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the Subject Property.

13. The Contracts constitute valid and legally enforceable contracts under Idaho law.

14. BRN has breached the Contracts by not paying ACI for the work ACI performed pursuant to the Contracts. The amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The amount of interest currently due and owing pursuant to Idaho law is \$407,409.72 as of August 1, 2011.

15. As a direct and proximate result of BRN's breach of contracts, ACI is owed at least \$1,501,590.50, plus and attorney fees and costs. The total amount of damages, including but not limited to the total interest due on said amount at the highest rate allowed by the Contracts and Idaho law, shall be proven at trial.

**COUNT 3
RIGHT TO COLLECT ON THE MECHANIC'S LIEN BOND**

16. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

17. ACI, as a registered Idaho contractor, performed labor, supplied equipment and furnished materials for various construction work, including but not limited to construction design, construction management and physical construction of streets, golf course, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the Improved Property. The first materials were delivered to the project on August 22, 2006. The first labor on the job commenced on August 26, 2006. The major work was commenced on October 1, 2006, which has continued in various degrees of performance until March 30, 2009, at the express and implied request of BRN and with the full knowledge of BRN and AMERICAN BANK.

18. As of June 15, 2009, the amount due and owing to ACI from BRN for labor performed, equipment supplied and materials furnished was \$1,499,827.63, which included various labor and material, excluding interest owed pursuant to the terms of the Contracts. As a result, on that same date, ACI recorded a Claim of Lien against the Improved Property for the principal amount due and owing, interest thereon and costs and attorney's fees pursuant to Idaho Code 45-513.

19. BRN later made a partial payment on account on December 9, 2009, for which ACI recorded an Endorsement to Claim of Lien for Payment on Account.

20. Pursuant to the Contracts, the amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The August 1, 2011, accruing at \$493.67 per day. Pursuant to the contract and state law, ACI is also owed attorney's fees and court costs.

21. ACI recorded a claim of lien on the Subject Property. The claim of lien is attached hereto and incorporated herein as **Exhibit "C."** The claim of lien was extended by an "Endorsement to Claim of Lien for Payment on Account," a copy of which is attached hereto and incorporated herein as **Exhibit "D."** ACI's lien was entitled to foreclosure, priority and/or a determination of the title, estate or interest of all parties hereto pursuant to Idaho Code §§ 45-506, 45-507, 45-510, 45-512 and 45-1302; however, AMERICAN BANK and ACI stipulated to release the lien of ACI. An Order releasing the ACI lien was entered on July 27, 2010, and a "Release of Mechanic's Lien Bond" from International Fidelity Insurance Company was posted. International Fidelity Insurance Company is obligated to pay ACI such amounts as this Court may adjudge to have be owing with interest, cost, and attorney's fees. A copy of the bond is attached hereto and incorporated herein as **Exhibit "E."** Due to the posting of the bond, no priority is relevant, but if deemed to be relevant, then ACI's lien priority would be superior to AMERICAN BANK.

COUNT 4

AMERICAN BANK AND/OR ITS SUCCESSORS SHOULD NOT BE ALLOWED TO RETAIN ILL-GOTTEN GAINS, IF SUCH GAINS EXIST

(unjust enrichment, quantum meruit, waiver, and/or equitable estoppel)

22. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

23. On or about 2005 and 2006, BRN commenced a plan to develop real property located in Kootenai County, Idaho, the Improved Property.

24. BRN entered into negotiations with ACI for substantial contracting related to a golf course community patterned after the successful Black Rock Golf Community.

25. BRN was to pay to ACI millions of dollars for substantial improvement to create a new golf course community, "Black Rock North Golf Community," on the Improved Property. AMERICAN BANK agreed to finance the construction of the project. AMERICAN BANK's records show that AMERICAN BANK knew that ACI was working on the project and was willing to do infrastructure work for Black Rock North Golf Community. AMERICAN BANK's records show that AMERICAN BANK reserved the right to approve all contractors on the Black Rock North Golf Community project. AMERICAN BANK knew of ACI's valid economic expectancy to be paid for the work completed on the Black Rock North Golf Community project.

26. On information and belief, ACI believes that AMERICAN BANK has negotiated deals with third parties to the project to allow a third party to buy an interest in the note and mortgage which allow the third party to benefit for the from ACI's materials and labors that added to the value of the subject golf course community.

27. On information and belief, ACI believes that AMERICAN BANK has negotiated deals with other investors in the subject golf course community to allow investors to benefit from ACI's materials and labors that added to the value of the subject golf course community without paying for the enrichment.

28. On information and belief, ACI believes that AMERICAN BANK may have taken actions which appear to be unjust, inappropriate and probable violation of banking standards and/or regulations, including but not limited to:

- 28.1 Reckless disregard in communication as to construction funding;
- 28.2 Improper loan practices;
- 28.3 Insufficient ability to loan sums for a golf course community;
- 28.4 Improper appraisal orders and controls; and
- 28.5 Other incidents of unclean hands.

29. Even if there were no express or implied contracts between ACI and BRN and AMERICAN BANK and AMERICAN BANK's joint ventures, partners, or investors as is alleged in COUNT I above, ACI has provided a benefit to BRN in the form of ACI's various construction materials and labor, which BRN has accepted and which AMERICAN BANK's joint ventures, partners, or investors attempt to gain without full payment.

30. If under these circumstances any unjust enrichment exists, then such sums should be disgorged.

WHEREFORE, ACI prays for judgment as follows:

As to the Declaratory Judgment Count:

1. For a declaration of the Court as to the Rights and the Parties in Regard to the Following:

- 1.1 Is a subordination valid if contained in a lien release and no consideration was paid for the subordination?
- 1.2 Can AMERICAN BANK legally rely on a subordination agreement contained in a release of lien as a basis to subordinate ACI's lien priority to AMERICAN BANK's mortgage when AMERICAN BANK was not a party to the release?

**As To Contractual Relief And The Statutory Relief Under The Idaho Lien Statute
In Accordance With The Bond Posted To Release The Lien:**

1. For judgment in favor of ACI declaring that the lien recorded by ACI against the Subject Property and as extended through partial payment by BRN and recorded endorsement is valid and has fulfilled all statutory requirements.
2. For judgment declaring that the sum, as proven in trial, is owed by the lien claimant's debtor to have been secured by the Subject Lien along with interest (highest rate allowed by Idaho law), and reasonable cost and attorney fees as determined by this court.
3. For any other relief that the Court deems just and proper.

In The Alternative Or In Addition To The Contractual Relief And The Statutory Remedies That AMERICAN BANK And Its Successors And/Or Joint Venturers Should Be Disgorged Of Any Unjust Enrichment In Taking Of The Subject Golf Course Community With The ACI Improvements If Such Enrichment Exists:

1. For the entry of judgment in favor of ACI and against AMERICAN BANK and its successors in interest in amount as this court may adjudge to be adequate to avoid any unjust enrichment if such exists.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves and Idaho law, including but not limited to Idaho Code §§ 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e).
3. For any other relief that the Court deems just and proper.

DATED this ____ day of August, 2011.

JAMES, VERNON & WEEKS, PA

By: _____
Steven C. Wetzel
Attorneys for ACI NORTHWEST, INC.

ACI NORTHWEST, INC.'S AMENDED ANSWER TAYLOR ENGINEERING'S THIRD PARTY COMPLAINT, AND ACI NORTHWEST INC.'S AMENDED CROSS-CLAIMS AND DEMAND FOR JURY TRIAL - 12

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on the _____ day of August, 2011, I served the foregoing document upon:

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_____ Hand Delivered	Elizabeth A. Tellessen
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	<i>Inc.</i>

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Roland M. Casati Family Trust, Dated
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EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-17833.2
Version 3
UPDATE

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH,
RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT,
A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY
ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0
FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO
THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE
NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE
TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH,
RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING

COMPUTED BY: L. L. L. L.



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Order No. 6001-17833.2
Version 3
UPDATE

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

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EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

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THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

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EXHIBIT "A"
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TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

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EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

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EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE
NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE
MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E"
OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID
COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE
NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

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NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF
SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF
BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4,
SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF
THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND
BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE
NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00
DEGREES 46' 41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS
4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115
BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2
COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

1) NORTH 50 DEGREES 44' 36" WEST, A DISTANCE OF 73.10 FEET;

2) THENCE NORTH 60 DEGREES 31' 30" WEST, A DISTANCE OF 210.09 FEET TO THE
INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4,
SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87
DEGREES 13' 28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT
LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

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EXHIBIT "A"
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFF'S BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

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THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE
INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE
NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF
BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE
NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF
BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE,
65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFTS BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY
LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF
BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE PLAT OF MCLEAN MEADOWS RECORDED
IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE
SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

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EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SE 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

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EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD,

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS;

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.



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EXHIBIT "B"
CONDITIONAL LIEN WAIVER, RELEASE AND SUBORDINATION

Payment Amount: \$.0
 For Work Through: , 200

TO: BRN Development, Inc.
 P.O. Box 3070
 Coeur d' Alene, ID 83816

RE: CONTRACT #065035_C0007

Upon receipt of payment of the sum of \$ 18,251.⁸⁷, the undersigned waives any and all right to any lien whatever and releases all rights to lien or claim any lien against the real property associated with the above Project by the undersigned in connection with any and all work or labor performed, materials, equipment, goods, or things supplied or furnished, or any other claims or obligations owed through the date shown above, on the above-named Project.

This waiver and release does not cover rights or obligations that might accrue after the above date for additional work that may be performed. In addition, upon receipt of the payment stated above, the undersigned agrees that any lien that may be filed for work performed after said date will only have lien priority from and after the date stated above and will be subordinate to any liens or encumbrances attaching to the subject property prior to said date.

As an inducement to the above-named Owner to make the payment first described above, the undersigned further covenants and represents that it has performed the work and/or furnished the materials pursuant to and in accordance with the plans and specifications or work order in effect up through 3-25, 2008. The undersigned further covenants and represents that either all obligations related to labor, equipment, supplies, materials, lower tier subcontractors at all levels and consultants through the date first stated above have been fully paid, or all such obligations will be paid first out of the funds to be received before any of said funds will be applied to any other purpose and the payment first described above will be sufficient to fully satisfy all such obligations.

If signed on behalf of a company, the undersigned certifies under penalty of perjury under the laws of the State of Idaho that he or she is authorized to execute the same on behalf of the company to be bound.

COMPANY: ACI Northwest Inc.
 By: Delores Fletcher
 Its: Corp. Secretary

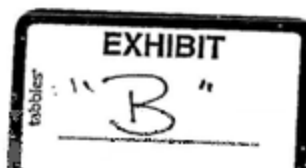
STATE of Idaho)
 County of Kootenai) ss.

On this 24th day of March, 2008, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Delores Fletcher, known or identified to me to be the Corp. Secretary of _____, the corporation that executed the foregoing instrument and acknowledged the said instrument to be a free and voluntary act and deed of the corporation, for the uses and purposes set forth therein, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



S. VandeLinden
 Notary Public in and for the State of Idaho
 Residing at: Heyden
 My Commission Expires: 3/12/13





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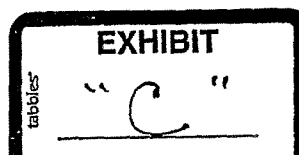
DANIEL J. ENGLISH 10P Y 2216696000
KOOTENAI CO, RECORDER Page 1 of 18
BBB Date 06/15/2009 Time 11:51:54
REC-REQ OF ACI NORTHWEST INC
RECORDING FEE: 48.00
2216696000 XN 10

CLAIM OF LIEN

1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63, *see attached Exhibit "B"*.
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached Exhibit "B"*.
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

CLAIM OF LIEN

1



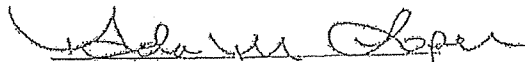
361

STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien. I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

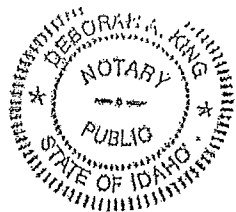
ACI Northwest, Inc.

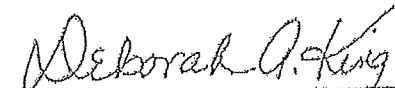

Ada Loper, Secretary/Treasurer

STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.




Notary for the State of Idaho
Commission Expires: 7/21/09

Order No. 6001-17833.2

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 538.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFT'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFT'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFT'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE
NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE
MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E"
OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID
COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE

NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

EXHIBIT "A"
LEGAL DESCRIPTION

NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46' 41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44' 36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31' 30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13' 28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

EXHIBIT 'A'
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFTS BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFT'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE, 65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFTS BAY ROAD;

THENCE NORTH 57' DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE PLAT OF MCLEAN MEADOWS RECORDED IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SC 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOEF'S BAY COUNTY ROAD.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOEF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

ACI NORTHWEST, INC.
SCHEDULE OF CURRENT AMOUNTS DUE FROM BLACK ROCK ENTITIES

<u>Due</u> <u>Date</u>	<u>Contract</u>	<u>Invoice</u>	<u>Amount</u>	<u>Interest</u> <u>at 12%</u> <u>Accrued to 05/31</u>	
9/10/2008	8104	6169	52,155.00	4,509.62	Blackrock Offsite Sewer
10/10/2008	8101	6322	206,016.63	15,781.44	Panhandle Modifications
10/10/2008	8970	6312	7,135.36	546.59	Cart Path Work-Hole 5&6
10/10/2008	8187	6367	6,573.65	503.56	New Clubhouse Site 06-5040
10/10/2008	8186	6366	4,270.89	327.16	BRN Erosion Control 06-5035
11/10/2008	8101	6446	20,981.75	1,392.09	Panhandle Modifications
11/10/2008	8027	6452	19,670.00	1,299.66	BRN Winter Work
11/10/2008	8974	6448	1,462.73	97.14	Koolenal Camp 06-5038
11/10/2008	8187	6451	13,922.92	924.63	New Clubhouse Site 06-5040
11/10/2008	8964	6487	1,036.93	68.86	BRN Golf Course 06-5040
11/10/2008	8186	6450	14,568.30	967.49	BRN Erosion Control 06-5035
11/10/2008	8097	6436	837.99	55.65	BR Comfort Station-Retention
11/10/2008	8058	6436	2,312.00	153.54	BR House Demo-Retention
12/10/2008	8101	6608	18,355.69	1,037.98	Panhandle Modifications
12/10/2008	8101	6677	49,644.78	2,801.66	Panhandle Retention
12/10/2008	8964	6628	3,045.90	172.24	BRN Golf Course 06-5040
12/10/2008	8186	6652	3,742.46	211.63	BRN Erosion Control 06-5035
12/10/2008	8503	6646	4,240.00	239.76	BRN Conduit @ New Entrance
12/10/2008	8097	6661	1,178.95	66.67	BRN Comfort Stations
12/10/2008	8027	6676	16,110.84	911.02	BRN Winter work plus retention
12/10/2008	8104	6678	7,032.49	397.67	BRN Offsite sewer retention
			454,075.06	32,466.08	
Bonus Per Contract for Cost Savings			1,045,752.57		
			1,499,827.63	32,466.08	
Per Diem Interest				493.09	

Exhibit B



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DANIEL J. ENGLISH 4P X 2244689000
KOOTENAI CO. RECORDER Page 1 of 4
AAA Date 12/10/2009 Time 12:46:39
REC-REQ OF ACI NORTHWEST INC
RECORDING FEE 12.00
2244689000 XN 11

**ENDORSEMENT TO CLAIM OF LIEN
FOR PAYMENT ON ACCOUNT**

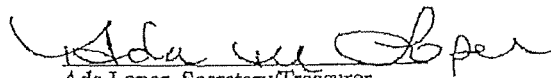
1. The name of the claimant is ACI Northwest, Inc., having its principal place of business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815 (hereinafter "Claimant").
2. The name of the owner of the real property and improvements thereon against which the lien referred to herein is claimed (hereinafter "Property") is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant previously recorded a Claim of Lien as Instrument No. 2216696000, Records of Kootenai County, Idaho, against the Property. A copy of said Claim of Lien is attached hereto as Exhibit "A".
4. The Claimant received a payment on account from Owner on December 9, 2009. Therefore, pursuant to Idaho Code Section 45-510, the binding effect of the Claim of Lien shall run for six (6) months after that date.
5. This Endorsement and the underlying payment on account shall not affect Owner's rights to challenge the validity of the Claim of Lien referred to herein.

STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

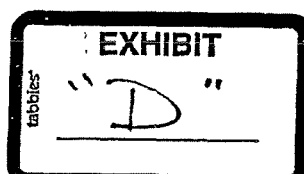
I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the Claim of Lien referenced above. I am competent to testify as to all matters contained in this Endorsement to Claim of Lien for Payment on Account. I have read the foregoing Endorsement to Claim of Lien for Payment on Account, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

ACI Northwest, Inc.


Ada Loper, Secretary/Treasurer

ENDORSEMENT TO
CLAIM OF LIEN FOR
PAYMENT ON ACCOUNT

1

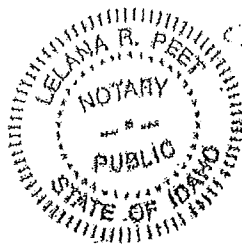


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STATE OF IDAHO)
):ss
County of Kootenai)

On this 10th day of December, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.



Lelana R. Peet
Notary for the State of Idaho
Commission Expires: 4/5/10

ENDORSEMENT TO
CLAIM OF LIEN FOR
PAYMENT ON ACCOUNT

COPY

DANIEL J. ENGLISH 1SP I 2216698000
KOOTENAI CO. RECORDER P. 1 of 15
BBB Date 08/15/2009 Time 11:51:54
REC-BOOK OF ACI NORTHWEST INC
RECORDING FEE: 45.00
2216698000 XN 16

CLAIM OF LIEN

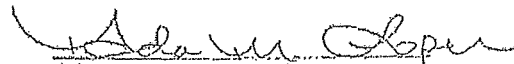
1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63. *see attached* Exhibit "B".
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached* Exhibit "B".
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien. I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

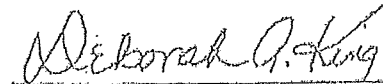
ACI Northwest, Inc.

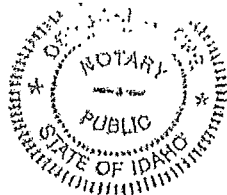

Ada Loper, Secretary/Treasurer

STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.


Notary for the State of Idaho
Commission Expires: 7/21/09





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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On JUL 15 2010 before me, Simone Gerhard, Notary Public,
personally appeared Brenda Wong who proved to me
on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

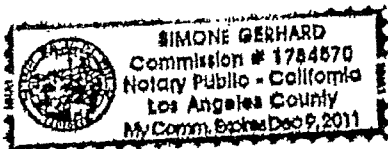
I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature

Simone Gerhard



STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 849

2011 SEP 20 PM 2:11

CLERK DISTRICT COURT

Cathy Victoria
DEPUTY

1 NANCY L. ISSERLIS, ISB #7331
2 ELIZABETH A. TELLESSEN, ISB #7393
3 WINSTON & CASHATT
4 250 Northwest Boulevard, Suite 206
5 Coeur d'Alene, Idaho 83814
6 Telephone: (208) 667-2103
7 Facsimile: (208) 765-2121
8 nli@winstoncashatt.com & eat@winstoncashatt.com

9 RANDALL A. PETERMAN, ISB #1944
10 C. CLAYTON GILL, ISB No. 4973
11 MOFFATT, THOMAS, BARRETT, ROCK
12 & FIELDS, CHARTERED
13 101 South Capital Blvd., 10th Floor
14 P.O. Box 829
15 Boise, Idaho 83701
16 Telephone: (208) 345-2000
17 Facsimile: (208) 385-5384
18 rap@moffatt.com & ccg@moffatt.com

19 Attorneys for Plaintiff

20 **IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE**
21 **OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

22 AMERICAN BANK, a Montana banking
23 corporation,

24 Plaintiff,

25 vs.

26 BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho
limited liability company, THORCO, INC., an

Case No. CV 09-2619

PLAINTIFF AMERICAN BANK'S
ANSWER TO ACI NORTHWEST INC.'S
AMENDED CROSS-CLAIM

PLAINTIFF AMERICAN BANK'S AMENDED
ANSWER TO ACI NORTHWEST INC.'S CROSS-CLAIM - 1

384 Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814

1 Idaho corporation, CONSOLIDATED SUPPLY
2 COMPANY, an Oregon corporation,
3 INTERSTATE CONCRETE & ASPHALT
4 COMPANY, an Idaho corporation, CONCRETE
5 FINISHING, INC., an Arizona corporation, THE
6 TURF CORPORATION, an Idaho corporation,
7 WADSWORTH GOLF CONSTRUCTION
8 COMPANY OF THE SOUTHWEST, a Delaware
9 corporation, POLIN & YOUNG
10 CONSTRUCTION, INC., an Idaho corporation,
11 TAYLOR ENGINEERING, INC., a
12 Washington corporation, PRECISION
13 IRRIGATION, INC., an Arizona corporation and
14 SPOKANE WILBERT VAULT CO., a
15 Washington corporation, d/b/a WILBERT
16 PRECAST,

Defendants.

And

12 TAYLOR ENGINEERING, INC., a Washington
13 corporation,

Third-Party Plaintiff,

v.

16 ACI NORTHWEST, INC., an Idaho corporation;
17 STRATA, INC., an Idaho corporation; and
18 SUNDANCE INVESTMENTS, LLP, a limited
19 liability partnership,

Third-Party Defendants.

And

21 ACI NORTHWEST, INC., an Idaho
22 corporation,

Cross-Claimant,

v.

24 AMERICAN BANK, a Montana banking
25 corporation, BRN DEVELOPMENT, INC., an
26

Idaho corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY, an
Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a Delaware
corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho corporation,
TAYLOR ENGINEERING, INC., a
Washington corporation and PRECISION
IRRIGATION, INC., an Arizona corporation,

Cross Claim Defendants.

Plaintiff, American Bank, a Montana banking corporation, through its attorneys of record,
submits this answer to ACI Northwest, Inc.'s Amended Answer to Taylor Engineering, Inc.'s Third
Party Complaint and Defendant ACI Northwest Inc.'s Amended Cross-Claims and Demand for Jury
Trial, and admits and denies as follows:

AMENDED ANSWER

American Bank lacks sufficient information to form a belief as to the truth of the averments set
out in the Amended Answer and therefore denies the same.

AMENDED CROSS-CLAIM

1. American Bank lacks sufficient information to admit or deny the averment set out in
paragraph 1 of the Cross-Claim and therefore denies the same.

2. American Bank admits that BRN Development, Inc. is an Idaho corporation transacting business in Kootenai County Idaho, but lacks sufficient information to form a belief as to the truth of the remaining averment in paragraph 2 of the Cross-Claim, and therefore, denies the same.

3. American Bank admits that it is a Montana banking corporation, with its primary place of business in Bozeman, Montana, and has foreclosed its security interest in the property described on Exhibit A. American Bank admits that it is the named plaintiff in this lawsuit, but denies that it is pursuing any affirmative claims in this case. American Bank admits that its mortgage was found by the court to be the first and prior lien against Black Rock North.

4. The averments in paragraph 4 of the Cross-Claim, do not relate to the claims asserted against American Bank and American Bank lacks sufficient information to admit those averments and therefore denied the same.

JURISDICTION AND VENUE

5. American Bank admits the averments in paragraph 5 of the Cross-Claim, except American Bank denies that this court has jurisdiction over it based on Idaho Code § 5-514(a).

COUNT 1-DECLARATORY ACTION AGAINST AMERICAN BANK

6. American Bank incorporates the foregoing answers as if fully set forth herein.

7. American Bank admits that ACI subordinated its claim of lien to American Bank's mortgage and that ACI released and waived its right to lien for unpaid retainage by executing the Golden Releases. American Bank denies all other factual averments set forth in paragraph 6 of the Cross-Claim.

8. Paragraph 7 of the Cross-Claim asserts legal conclusions to which no response is required, but to the extent that factual averments could be inferred American Bank denies the same.

9. American Bank denies the averments set forth in paragraph 8.

10. Paragraph 8.1 of the Cross-Claim poses a legal question to which no response is required, but to the extent that factual averments could be inferred American Bank answers in the affirmative that the Golden Lien Releases executed by ACI were effective to subordinate any lien asserted by it to the interests of American Bank.

11. Paragraph 8.2 of the Cross-Claim poses a legal question to which no response is required, but to the extent that factual averments could be inferred, American Bank answers in the affirmative.

12. Paragraph 9 of the Cross-Claim poses a legal question to which no response is required, but to the extent that factual averments could be inferred, American Bank answers in the affirmative that the Golden Lien Releases executed by ACI were effective to subordinate any lien asserted by it to the interests of American Bank and denies that no consideration was given for the subordination.

13. American Bank admits the averments set forth in paragraph 9.1 of the Cross-Claim.

14. American Bank admits the averments set forth in the first sentence of paragraph 9.2 and denies the averments set forth in the second sentence.

15. Paragraph 10 of the Cross-Claim poses a legal question to which no response is required, but to the extent that factual averments could be inferred, American Bank answers in the affirmative.

16. American Bank denies the averments set forth in paragraph 10.1 of the Cross-Claim.

17. American Bank admits the averments set forth in the first clause of paragraph 10.2 and denies the averment that American Bank was not a party or third party beneficiary to the Golden Lien Release.

COUNT 2-BREACH OF EXPRESS OF IMPLIED CONTRACT BY BRN

18. American Bank incorporates the foregoing answers as if fully set forth herein.

19. American Bank admits that ACI and BRN Development entered into express contracts related to Black Rock North and that ACI performed, at least in part under those contracts, but American

1 Bank lacks sufficient information to form a belief as to the truth of the remainder of the averments set
2 forth in paragraph 12 of the Cross-Claim, and therefore, denies the same.

3 20. Paragraph 13 of the Cross-Claim draws a legal conclusion to which no response is
4 required, nevertheless American Bank lacks sufficient information to admit the factual averment
5 inferred therefrom and thus denies the same.

6
7 21. American Bank lacks sufficient information to admit the factual averments set forth in
8 paragraph 14 and thus denies the same. In particular, American Bank denies the amount due and owing
9 to ACI is \$1,501,590.50, and denies ACI is entitled to interest in the amount of \$407,409.50 as of
10 August 1, 2011, or any other amount.

11 22. American Bank lacks sufficient information to admit the cause of any loss allegedly
12 suffered by ACI and therefore denies the factual averments set forth in paragraph 15.

13 **COUNT 3-RIGHT TO COLLECT ON THE MECHANIC'S LIEN BOND**

14
15 23. American Bank incorporates the foregoing answers as if fully set forth herein.

16 24. American Bank lacks sufficient information to form a belief as to the truth of the
17 averments of paragraph 17 of the Cross-Claim, and therefore, denies the same, and further, specifically
18 denies that American Bank had any specific knowledge of the work done by ACI.

19 25. American Bank admits that ACI has filed a Claim of Lien. American Bank denies the
20 remaining factual averments set forth in paragraph 18 of the Cross-Claim.

21
22 26. American Bank admits ACI recorded an Endorsement to Claim of Lien for Payment, but
23 denies the remaining averments of paragraph 19 of the Cross-Claim.

24 27. American Bank denies the averments of paragraph 20 of the Cross-Claim.

25 28. American Bank admits Exhibits C and D are attached to ACI's answer and Cross-Claim
26 and that ACI's lien was released from Black Rock North, but American Bank denies the claim of lien

1 was extended by an "Endorsement to Claim of Lien for Payment on Account", and denies ACI is
2 entitled to foreclosure of its claim of lien or any determination of title or interest in its favor pursuant to
3 Idaho Code sections 45-506, 45-507, 45-510, 45-512 and 45-1302 as it failed to comply with Idaho
4 Code Sections 45-505, 45-507(2), 45-507(3)(a) and (d); 45-508, 45-510, 45-519, 54-5204(2); and 54-
5 5217(2). Further, American Bank denies ACI has a priority claim of lien as it voluntarily and
6 knowingly, and in writing waived, released and subordinated its lien rights through at least September,
7 2008. American Bank admits a lien bond was posted and recorded, which is attached as Exhibit E, but
8 denies International Fidelity Insurance Company is obligated to pay ACI any amount, and denies the
9 remaining averments found in paragraph 21.

11 **COUNT 4-AMERICAN BANK AND/OR ITS SUCCESSORS SHOULD NOT BE ALLOWED TO**
12 **RETAIN ILL-GOTTEN GAINS, IF SUCH GAINS EXIST**
13 (unjust enrichment, quantum meruit, waiver, and/or equitable estoppel)

14 29. American Bank incorporates the foregoing answers as if fully set forth herein.

15 30. American Bank lacks sufficient information to form a belief as to the truth of the
16 allegations of paragraph 23 of the Cross-Claim, and therefore, denies the same.

17 31. American Bank lacks sufficient information to form a belief as to the truth of the
18 averments of paragraph 24 of the Cross-Claim, and therefore, denies the same.

19 32. American Bank admits ACI was paid millions of dollars by BRN Development for work
20 done on Black Rock North. American Bank denies that it agreed to finance the construction of the
21 project. American Bank admits that BRN informed it that ACI had been selected to work on Black
22 Rock North, but denies the remaining factual averments set out in the third sentence of paragraph 25.
23 American Bank denies the averments set forth in the fourth and fifth sentences of paragraph 25.
24
25
26

1 33. American Bank admits that there were participants in the Note and Mortgage, and that it
2 assigned its interest in the same to Fidelity National Timber Resources on June 1, 2011, but American
3 Bank denies the remaining factual averments set forth in paragraph 26 of the Cross-Claim.

4 34. American Bank admits that there were participants in the Note and Mortgage, and that it
5 assigned its interest in the same to Fidelity National Timber Resources on June 1, 2011, but American
6 Bank denies the remaining factual averments set forth in paragraph 27 of the Cross-Claim.

8 35. American Bank denies the averments set forth in paragraph 28 of the Cross-Claim.

9 36. American Bank denies the averments set forth in paragraph 28.1 of the Cross-Claim.

10 37. American Bank denies the averments set forth in paragraph 28.2 of the Cross-Claim.

11 38. American Bank denies the averments set forth in paragraph 28.3 of the Cross-Claim.

12 39. American Bank denies the averments set forth in paragraph 28.4 of the Cross-Claim.

13 40. American Bank denies the averments set forth in paragraph 28.5 of the Cross-Claim.

14 41. American Bank denies the averments set forth in paragraph 29 of the Cross-Claim.

15 42. American Bank denies the averments set forth in paragraph 30 of the Cross-Claim.

17 AFFIRMATIVE DEFENSES

18 Based on the answers set forth above, which are fully incorporated herein, American Bank
19 asserts the following affirmative defenses to the cross-claims asserted by ACI:

20 1. The Cross-Claim fails to state a cause upon which relief can be granted, as ACI can
21 prove no set of facts in support of Count 4 that would entitle it to relief.

22 2. The Cross-Claims are barred by accord and satisfaction.

23 3. The Cross-Claims are barred by failure of consideration.

24 4. The Cross-Claims are barred by payment.

25 5. The Cross-Claims are barred by release or satisfaction.

1 6. The Cross-Claims are barred by failure to act reasonably or otherwise mitigate damages,
2 if any.

3 7. The Cross-Claims are barred by set off, recoupment or offset.

4 8. The Cross-Claims are barred by express contract.

5 9. The Cross-Claims are barred by implied contract, either in law or in fact.

6 10. The Cross-Claims are barred by breach of contract.

7 11. The Cross-Claims are barred by waiver and estoppel.

8 12. The Cross-Claims are barred by failure to properly perfect a lien for labor and material.

9 13. The Cross-Claims are barred by laches.

10 14. The Cross-Claims are barred by the statute of frauds.

11 15. The Cross-Claims are barred by failure to name and join all necessary parties and real
12 parties in interest.

13 16. The Cross-Claims are barred by the applicable statute of limitations.

14 17. The Cross-Claims are barred by the economic loss rule.

15 18. The Cross-Claims, in particular count 4, is advanced without being well grounded in fact
16 and is not warranted by existing law, is frivolous and brought for the sole purpose of harassment of
17 American Bank.

18 19. ACI's claim of lien is invalid in whole or in part for its failure to comply with Idaho
19 Code Sections 45-505, 45-507(2), 45-507(3)(a) and (d); 45-508, 45-510, 54-5204(2); and 54-5217(2).

20 20. ACI's claim against the lien bond should be denied in its entirety because ACI's claim of
21 lien was unsecured.

ATTORNEY'S FEES

American Bank has been required to retain the services of an attorney to defend the claims of ACI and is entitled to an award of costs, expenses and reasonable attorney fees in defending these cross-claims.

WHEREFORE, Plaintiff demands judgment under the Cross-Claim as follows:

A. For a judgment, order and decree of this Court, holding that the lien alleged as a part of the Cross-Claim is subordinate to American Bank's Mortgage and the other Loan Documents, as alleged in the First Amended Complaint filed with this Court by Plaintiff on April 2, 2009;

B. For judgment or order dismissing ACI's Cross-Claims with prejudice;

C. For a judgment, order and decree of this Court, awarding American Bank its costs, expenses and reasonable attorneys' fees incurred in defending the Cross-Claims; and

E. For such other and further relief as to the Court seems just and equitable.

DATED this 20 day of September, 2011.



NANCY L. ISSERLIS, ISB No. 7331

ELIZABETH A. TELLESSEN, ISB No. 7393

WINSTON & CASHATT

Attorneys for Plaintiff American Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 20 day of September, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

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View AG, and Robert Levin, Trustee For The Roland M. Casati
Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee
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22 Attorneys for Third Party Defendant ACI

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24 ELIZABETH A. TELLESSEN

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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
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CLERK DISTRICT COURT

DEPUTY *Sherry Halpin*

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho
limited liability company, THORCO, INC., an

Case No. CV 09-2619

**AMERICAN BANK'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT RE COUNT 4 OF ACI'S FIRST
AMENDED CROSS CLAIM**

AMERICAN BANK'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT
RE COUNT 4 OF ACI'S FIRST AMENDED CROSS CLAIM - 1

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396

1 Idaho corporation, CONSOLIDATED SUPPLY
2 COMPANY, an Oregon corporation,
3 INTERSTATE CONCRETE & ASPHALT
4 COMPANY, an Idaho corporation, CONCRETE
5 FINISHING, INC., an Arizona corporation, THE
6 TURF CORPORATION, an Idaho corporation,
7 WADSWORTH GOLF CONSTRUCTION
8 COMPANY OF THE SOUTHWEST, a Delaware
9 corporation, POLIN & YOUNG
10 CONSTRUCTION, INC., an Idaho corporation,
11 TAYLOR ENGINEERING, INC., a Washington
12 corporation, PRECISION IRRIGATION, INC.,
13 an Arizona corporation and SPOKANE
14 WILBERT VAULT CO., a Washington
15 corporation, d/b/a WILBERT PRECAST,

Defendants.

And

12 TAYLOR ENGINEERING, INC., a Washington
13 corporation,

Third-Party Plaintiff,

v.

16 ACI NORTHWEST, INC., an Idaho corporation;
17 STRATA, INC., an Idaho corporation; and
18 SUNDANCE INVESTMENTS, LLP, a limited
liability partnership,

Third-Party Defendants.

And

21 ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

v.

25 AMERICAN BANK, a Montana banking
26 corporation, BRN DEVELOPMENT, INC., an
Idaho corporation, BRN INVESTMENTS, LLC,

AMERICAN BANK'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT
RE COUNT 4 OF ACI'S FIRST AMENDED CROSS CLAIM - 2

1 an Idaho limited liability company, LAKE VIEW
2 AG, a Liechtenstein company, BRN-LAKE
3 VIEW JOINT VENTURE, an Idaho general
4 partnership, ROBERT LEVIN, Trustee for the
5 ROLAND M. CASATI FAMILY TRUST, dated
6 June 5, 2008, E. RYKER YOUNG, Trustee for
7 the E. RYKER YOUNG REVOCABLE TRUST,
8 MARSHALL CHESROWN a single man,
9 THORCO, INC., an Idaho corporation,
10 CONSOLIDATED SUPPLY COMPANY, an
11 Oregon corporation, THE TURF
12 CORPORATION, an Idaho corporation,
13 WADSWORTH GOLF CONSTRUCTION
14 COMPANY OF THE SOUTHWEST, a Delaware
15 corporation, POLIN & YOUNG
16 CONSTRUCTION, INC., an Idaho corporation,
17 TAYLOR ENGINEERING, INC., a Washington
18 corporation and PRECISION IRRIGATION,
19 INC., an Arizona corporation,

20 Cross Claim Defendants.

21 American Bank renews and supplements its motion for partial summary judgment seeking
22 dismissal of Count 4 (previously identified at Count 5) of *ACI's Northwest's Amended Answer to Taylor*
23 *Engineering, Inc.'s Third Party Complaint, and Defendant ACI Northwest Inc.'s Amended Cross-Claims*
24 *and Demand for Jury Trial*, filed August 24, 2011. There has been no change in the law or facts of this
25 case to support ACI's equitable claims against American Bank and thus its claims should be dismissed
26 by this court as a matter of law.

DATED this 3 day of November, 2011.


ELIZABETH A. TELLESSEN, ISB No. 7393
WINSTON & CASHATT
Attorneys for Plaintiff American Bank

AMERICAN BANK'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT
RE COUNT 4 OF ACI'S FIRST AMENDED CROSS CLAIM - 3

398
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 3 day of November, 2011, the foregoing was caused to be served on the following persons in the manner indicated:

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Attorney for Defendant Taylor Engineering

AMERICAN BANK'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT
RE COUNT 4 OF ACI'S FIRST AMENDED CROSS CLAIM - 4

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AMERICAN BANK'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT
RE COUNT 4 OF ACI'S FIRST AMENDED CROSS CLAIM - 5

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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG

Case No. CV09-2619

AFFIDAVIT OF BERTA BAGLEY IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

AFFIDAVIT OF BERTA BAGLEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT - 1

CONSTRUCTION, INC., an Idaho corporation, TAYLOR ENGINEERING, INC., a Washington corporation, PRECISION IRRIGATION, INC., an Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation; STRATA, INC., an Idaho corporation; and SUNDANCE INVESTMENTS, LLP, an Idaho limited liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking corporation, BRN DEVELOPMENT, INC., an Idaho corporation, BRN INVESTMENTS, LLC, an Idaho limited liability company, LAKE VIEW AG, a Liechtenstein company, BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST,

MARSHALL CHESROWN, a single man,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

STATE OF IDAHO)
) ss.
County of Kootenai)

I, Berta Bagley, after being duly sworn, depose and say:

1. I grew up in a heavy equipment construction family. I have a B.S. degree in business organization and leadership from Gonzaga. I have worked in the insurance industry for about 10 years. I have worked for Catholic Church and Diocese for about 16 years.

2. I worked for Defendant ACI Northwest, Inc. ("ACI") from 1995 to 2008, when I retired. I make this affidavit voluntarily, based upon personal knowledge and am competent to testify as to all matters contained herein. In my work at ACI, I have worked with all aspects of payables and receivables related to infrastructure construction. I have worked in construction contract management. I have reviewed and executed hundreds of lien releases and waivers. I have also been involved in the negotiation and execution of agreements in which ACI subordinated its interest to construction lenders.

3. Attached hereto as **Exhibit "A"** is a true and correct copy of a "Conditional Lien Waiver, Release and Subordination" which I signed as Senior Vice President. The owner of the

AFFIDAVIT OF BERTA BAGLEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT - 3

project required this document be signed in order for ACI to be paid for services and materials provided to the Black Rock North Golf Community project located south of Coeur d'Alene, which is the subject of this litigation. I signed a number of these lien waivers.

4. At the date I signed each of the "Conditional Lien Waiver, Release and Subordination" ("lien waiver document"), it was my understanding that the document was a release of lien for services and materials provided, which is the traditional requirement for payment on a progress payment on a construction project. It was never brought to my attention that the verbiage in the document in any way related to American Bank. No one explained, and I did not understand and still do not understand any part of the document to subordinate any of ACI's lien rights to any lender.

5. The subordination in my mind related to other contractors, but nothing in the language indicates that it was meant to relate to an agreement that ACI's lien rights were to be made junior to American Bank.

6. ACI is an infrastructure contractor. As such, it is often that ACI is on the ground working before any loans are made on the project. Typically, this happens because as soon as it appears that a loan is available, the developer requests the work commence as the time to construct is a large expenses because of interest cost. Time is the essence of these documents. Time truly is money in this case.

7. The timing of construction at this project was not unusual. During the busy years, ACI often had done substantial infrastructure, including mass excavation, import and/or export material well before any mortgage was recorded. Sometimes, the lender did nothing more than assure the contractors were paid and lien releases obtained as payments were made. Other times, subordination agreements were negotiated. When a subordination agreement is obtained, the

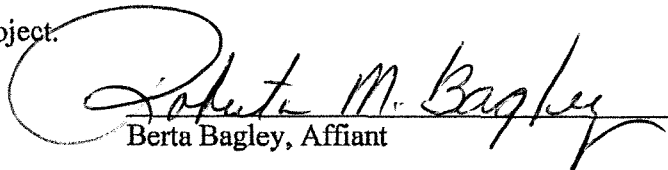
lender, the size of loan and other details are disclosed and a deal is negotiated. In my experience, subordination agreements are typically a two party contract with details sufficiently disclosed to allow a reasonable decision to be made by the lender and the contractor. No infrastructure contractor would casually subordinate to a lender just to get paid for services and material already provided to an owner. Being first on the project, especially before the mortgage is recorded, is a powerful assurance of payment and an assurance not given away without considerable analysis.

8. ACI received no additional compensation for alleged subordination to American Bank.

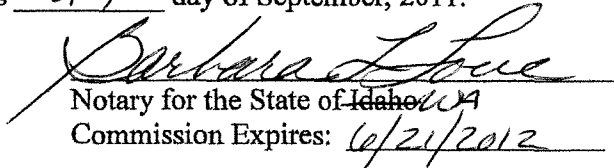
9. The alleged subordination clause contained in the lien waiver document was not a part of any bargain. There was no negotiation between American Bank and ACI in regard to subordinating its commencement date for lien purposes. Certainly, I did not understand the alleged consequences from the document as now claimed by American Bank. I was not warned of any such severe consequences before signing.

10. Neither I nor Delores Fletcher had the authority to execute a document on behalf of ACI that would eliminate ACI's right to claim a senior position over the lender. Infrastructure contractor officers are well aware of the all important lien rights. I would never knowingly subordinate the rights of ACI to be paid in the future just to get a partial payment for a portion of the services and material provided to a project.




Berta Bagley, Affiant

Subscribed and sworn to before me this 29 day of September, 2011.


Notary for the State of Idaho
Commission Expires: 6/21/2012

AFFIDAVIT OF BERTA BAGLEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 5

SEE CERTIFICATE OF MAILING AND/OR DELIVERY *FOR MOTION*

I hereby certify that on the _____ day of ~~September~~, 2011, I served the foregoing document upon:

____ U.S. Mail, Postage Prepaid Nancy L. Isserlis
____ Hand Delivered Elizabeth A. Tellessen
____ Overnight Mail Winston & Cashatt
____ Facsimile: 509-838-1416 250 Northwest Blvd., Suite 107A
____ jk@winstoncashatt.com Coeur d'Alene, ID 83814
____ nisserlis@winstoncashatt.com
____ etellessen@winstoncashatt.com *Attorneys for American Bank*

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____ Hand Delivered C. Clayton Gill
____ Overnight Mail Moffatt Thomas Barrett Rock &
____ Facsimile: 208-385-5384 Fields, Chtd.
____ rap@moffatt.com 101 South Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Attorneys for American Bank

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____ Hand Delivered Attorney at Law
____ Overnight Mail 201 West Seventh Avenue
____ Facsimile: 208-773-1044 Post Falls, ID 83854
Attorneys for Thorco, Inc.

____ U.S. Mail, Postage Prepaid Edward J. Anson
____ Hand Delivered Witherspoon Kelley Davenport &
____ Overnight Mail Toole
____ Facsimile: 208-667-8470 608 Northwest Blvd., Suite 300
Coeur d'Alene, ID 83814-2146
*Attorneys for The Turf Corporation,
Wadsworth Golf Construction
Company and Precision Irrigation,
Inc.*

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*Attorneys for Polin & Young
Construction*

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Witherspoon Kelley Davenport &
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Coeur d'Alene, ID 83815

*Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
BRN-Lake View Joint Venture, The
Roland M. Casati Family Trust, Dated
June 5, 2008*

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*Attorneys for Ryker Young Revocable
Trust*

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Maggie Y. Lyons, Receiver
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P.O. Box 598
Hayden, ID 83835

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Attorneys for Receiver

Deborah Hylton

H:\WETZEL\disk1\FILES\A\ACT Northwest, Inc\3 BRN\Pleadings\ACT's Pleadings\MS\Affidavit of Berta Bagley 9-26-11.doc



CONDITIONAL LIEN WAIVER, RELEASE AND SUBORDINATION

Payment Amount: \$171,696.98
For Work Through: June 25, 2008

TO: BRN DEVELOPMENT, INC., OWNER
P.O. Box 3070
Coeur d'Alene, ID 83816
- and -
ALL OTHER PARTIES IN INTEREST

RE: PROJECT - BLACK ROCK NORTH and BLACK ROCK NORTH GOLF COURSE,
COEUR D'ALENE, IDAHO

Upon receipt of payment of the sum of \$171,696.98, the undersigned waives any and all right to any lien whatever and releases all rights to lien or claim any lien against the real property associated with the above Project by the undersigned in connection with any and all work or labor performed, materials, equipment, goods, or things supplied or furnished, or any other claims or obligations owed through the date shown above, on the above-named Project.

This waiver and release does not cover rights or obligations that might accrue after the above date for additional work that may be performed. In addition, upon receipt of the payment stated above, the undersigned agrees that any lien that may be filed for work performed after said date will only have lien priority from and after the date stated above and will be subordinate to any liens or encumbrances attaching to the subject property prior to said date.

As an inducement to the above-named Owner to make the payment first described above, the undersigned further covenants and represents that it has performed the work and/or furnished the materials pursuant to and in accordance with the plans and specifications or work order in effect up through June 25, 2008. The undersigned further covenants and represents that either all obligations related to labor, equipment, supplies, materials, lower tier subcontractors at all levels and consultants through the date first stated above have been fully paid, or all such obligations will be paid first out of the funds to be received before any of said funds will be applied to any other purpose and the payment first described above will be sufficient to fully satisfy all such obligations.

If signed on behalf of a company, the undersigned certifies under penalty of perjury under the laws of the State of Idaho that he or she is authorized to execute the same on behalf of the company to be bound.

ACI NORTHWEST, INC.

By: Robert M. Bagley

Its: VP

STATE of Idaho

County of Kootenai

ss.

On this 4th day of August, 2008, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Robert M. Bagley, known or identified to me to be the VP of ACI Northwest, the corporation that executed the foregoing instrument and acknowledged the said instrument to be a free and voluntary act and deed of the corporation, for the uses and purposes set forth therein, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

EXHIBIT

"A"

Notary Public in and for the State of Idaho
Residing at: Hayden
My Commission Expires: 3/12/13



STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

2011 NOV -3 PM 3:46

CLERK DISTRICT COURT
Paul Chungach
DEPUTY

Steven C. Wetzel, ISB #2988
Kenneth Huitt, ISB# 8257
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khuit@jvwlaw.net

Attorneys for Defendant ACI NORTHWEST, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho

Case No. CV09-2619

AFFIDAVIT OF DELORES
FLETCHER IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT

corporation, TAYLOR ENGINEERING, INC., a Washington corporation, PRECISION IRRIGATION, INC., an Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation; STRATA, INC., an Idaho corporation; and SUNDANCE INVESTMENTS, LLP, an Idaho limited liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking corporation, BRN DEVELOPMENT, INC., an Idaho corporation, BRN INVESTMENTS, LLC, an Idaho limited liability company, LAKE VIEW AG, a Liechtenstein company, BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, MARSHALL CHESROWN, a single man,

THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

STATE OF IDAHO)
) ss.
County of Kootenai)

I, Delores Fletcher, after first being duly sworn, depose and say:

1. I worked for Defendant ACI Northwest, Inc. at the dates that I signed certain documents entitled Conditional Lien Waiver, Release and Subordination. I make this affidavit voluntarily, based upon personal knowledge and am competent to testify as to all matters contained herein.

2. Attached as **Exhibit "A"** is a true and correct copy of the Conditional Lien Waiver, Release and Subordination which I signed as Corporate Secretary on March 24, 2008, in order for ACI to be paid.

3. It was never brought to my attention that the Conditional Lien Waiver, Release and Subordination had any language that would in any way subordinate ACI's right to be paid for future work to the mortgage of American Bank.

4. I did not intend, by signing the Conditional Lien Waiver, Release and Subordination, that I was subordinating ACI's right to be paid for future work to the mortgage of American Bank. .

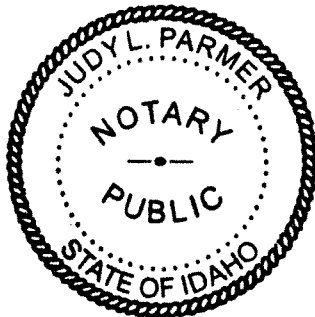
5. ACI received no additional compensation for allegedly subordinating all future work.

6. Neither I nor other office staff that signed a Conditional Lien Waiver, Release and Subordination would have had the authority to execute a document on behalf of ACI that would subordinate ACI's right to be paid for future work to the mortgage of American Bank.

7. In reading the Conditional Lien Waiver, Release and Subordination, I still do not understand it to say that ACI agreed subordinate ACI's right to be paid for future work to the mortgage of American Bank. There was no negotiation between American Bank and ACI in regard to subordinating its commencement date for lien purposes. Certainly, I did not understand the alleged consequences from the document as now claimed by American Bank. I was not warned of any such severe consequences before signing. The language in question does not even refer to a mortgage. It was my understanding that ACI waived its right to lien for the work for which it was paid. I did not and still do not understand the language that states, "the undersigned agrees that any lien that may be filed for work performed after said date will only have a lien priority from and after the date stated above and will be subordinated to any lien or encumbrances attaching to the subject property prior to said date" to mean that American Bank could foreclose on the project and not pay ACI for the work on the project. I did not and still do not understand the language in question to any way involve American Bank and/or the mortgage between American Bank and owner of the project.

Delores Fletcher
Delores Fletcher, Affiant

Subscribed and sworn to before me this 27 day of October, 2011.



Judy Parmer
Notary for the State of Idaho
Commission Expires: 8/23/14

see CERTIFICATE OF MAILING AND/OR DELIVERY *FORMATION*

I hereby certify that on the _____ day of ~~October~~, 2011, I served the foregoing document upon:

____ U.S. Mail, Postage Prepaid Nancy L. Isserlis
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____ Overnight Mail Toole
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Company and Precision Irrigation,
Inc.*

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*Attorneys for Polin & Young
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Spokane, WA 99201

Attorneys for Taylor Engineering, Inc.

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____ jrlayman@laymanlawfirm.com

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Layman Layman & Robinson, PLLP
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Coeur d'Alene, ID 83815

*Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
BRN-Lake View Joint Venture, The
Roland M. Casati Family Trust, Dated
June 5, 2008*

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Maggie Y. Lyons, Receiver
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Hayden, ID 83835

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Attorneys for Receiver

Deborah Hylton

H:\WETZEL\disk1\FILES\A\ACI Northwest, Inc\3 BRN\Pleadings\ACI's Pleadings\MSJ\Affidavit of Delores Fletcher in Support of Motion for Partial Summary Judgment.doc



EXHIBIT "B"
CONDITIONAL LIEN WAIVER, RELEASE AND SUBORDINATION

Payment Amount: \$ _____
 For Work Through: _____, 200

TO: BRN Development, Inc.
 P.O. Box 3070
 Coeur d' Alene, ID 83816

RE: CONTRACT #065035_C0007

Upon receipt of payment of the sum of \$ 18,251.⁸⁷, the undersigned waives any and all right to any lien whatever and releases all rights to lien or claim any lien against the real property associated with the above Project by the undersigned in connection with any and all work or labor performed, materials, equipment, goods, or things supplied or furnished, or any other claims or obligations owed through the date shown above, on the above-named Project.

This waiver and release does not cover rights or obligations that might accrue after the above date for additional work that may be performed. In addition, upon receipt of the payment stated above, the undersigned agrees that any lien that may be filed after said date will only have lien priority from and after the date stated above and will be subordinate to any to the subject property prior to said date.

As an inducement to the above-named Owner to make the payment first described above, the undersig. represents that it has performed the work and/or furnished the materials pursuant to and in accordance with the p. work order in effect up through 3-25, 2008. The undersigned further covenants and represents that either labor, equipment, supplies, materials, lower tier subcontractors at all levels and consultants through the date first sta paid, or all such obligations will be paid first out of the funds to be received before any of said funds will be applied the payment first described above will be sufficient to fully satisfy all such obligations.

If signed on behalf of a company, the undersigned certifies under penalty of perjury under the laws of the State of Idaho that he or she is authorized to execute the same on behalf of the company to be bound.

COMPANY: ACI Northwest Inc.
 By: Delores Fletcher
 Its: Corp. Secretary

STATE of Idaho,
 County of Kootenai } ss.

On this 24th day of March, 2008, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Delores Fletcher, known or identified to me to be the Corp. Secretary of _____, the corporation that executed the foregoing instrument and acknowledged the said instrument to be a free and voluntary act and deed of the corporation, for the uses and purposes set forth therein, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



S. VandenLinden
 Notary Public in and for the State of Idaho
 Residing at: Heyden
 My Commission Expires: 3/12/13



418